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June 20, 2016

**Delivered by RESS, Email & Courier**

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

Dear Ms. Walli,

**Re: EB-2016-0004 – Municipalities of Kincardine, Arran-Elderslie and the Township of Huron-Kinloss (“Southern Bruce”) - Natural Gas Expansion Generic Proceeding – Written Submissions**

Pursuant to Procedural Order No. 3, please find enclosed the Written Submissions of Southern Bruce.

Yours truly,

BORDEN LADNER GERVAIS LLP

*Original signed by John A.D. Vellone*

John A.D. Vellone  
JADV/bp  
Encl.

cc: Michael Millar, OEB Counsel  
Mayor Anne Eadie  
Mayor Paul Eagleson  
Mayor Mitch Twolan  
Dr. Lawrence Murphy  
Mr. John Todd  
Mr. Bruce Bacon  
All Intervenors (EB-2016-0004)

TOR01: 6372715: v1

**GENERIC PROCEEDING ON NATURAL GAS EXPANSION IN  
COMMUNITIES THAT ARE NOT SERVED**

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**SOUTHERN BRUCE MUNICIPALITIES  
WRITTEN SUBMISSIONS**

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June 20, 2016

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**SOUTHERN BRUCE MUNICIPALITIES  
WRITTEN SUBMISSIONS**

**A. INTRODUCTION**

1. We make these written submissions on behalf of the Municipality of Kincardine, the Municipality of Arran-Elderslie and the Township of Huron-Kinloss (“**Southern Bruce**”)<sup>1</sup> in respect of an application brought by the Ontario Energy Board (the “**OEB**” or the “**Board**”) on its own motion to consider potential alternative approaches to recover costs of expanding natural gas service to communities that are not currently served.
2. Southern Bruce would like to thank the Board for commencing this application on its own motion in connection with the Minister of Energy’s February 17, 2015 letter asking the Board to re-examine its oversight of the natural gas sector and to assess what options may exist to facilitate connecting more communities to natural gas.
3. The focus of the Southern Bruce submissions in this EB-2016-0004 are on matters of significance to the establishment of a framework for assessing natural gas distribution system expansion proposals. It is expected that the Board’s preferred policy will be operationalized as part of a separate process, after the Board outlines its policy framework.
4. The principal submission of the Southern Bruce communities is that additional regulatory flexibility is required to realistically facilitate the connection of more communities to natural gas in Ontario. The current regulatory construct serves as a barrier to lower cost energy choices for communities like Southern Bruce. It has also had the unintended effect of limiting competition in the provision of natural gas services. The lack of new entrants in Ontario, until EPCOR’s entry this year, illustrates this point. It also results in requirements for communities to fund contributions in aid of construction that are onerous and have the practical effect of prohibiting natural gas expansions into communities that are not currently being served.

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<sup>1</sup> We continue to intentionally use the nomenclature “Southern Bruce” rather than “South Bruce” to avoid confusion. There is a different municipality, called the Municipality of South Bruce, which is located adjacent to, but does not form part of, the Southern Bruce group.

5. Southern Bruce is not the only Ontario community advocating for more flexibility. The Board has also heard about the need for additional flexibility to facilitate natural gas expansion during the pre-hearing conference on April 26, 2015 from Councillor Jim Oliver from Norfolk County,<sup>2</sup> Mayor Doug Lawrence from the Municipality of Sioux Lookout,<sup>3</sup> Mayor Bill Vrebasch and Deputy Mayor Pauline Rocheford from the Municipality of East Ferris,<sup>4</sup> Mayor Bob McMillan and Chief Administrative Officer Glenn Schwendinger from the Township of Perth East,<sup>5</sup> and Mayor Patrick Sayeau of the Town of Edwardsburgh Cardinal.<sup>6</sup>
6. The Board has also received numerous letters of comment supporting the expansion of natural gas infrastructure to additional communities in Ontario, including from the Eastern Ontario Wardens' Caucus, the Western Ontario Wardens' Caucus, the Municipality of Sioux Lookout, The Nation Municipality, the Township of Scugog Island, the Township of Severn, the Township of Oro-Medonte, the Township of Warwick, the Municipality of Clarington, the Township of South Stormont, the Township of Madawaska Valley, the Milverton Business Association, the Knollcrest Lodge Long-Term Care Home, the Mornington Communications Coop Ltd., and the Avon Maitland District School Board.
7. Many of these communities have shared stories of the negative impact of having no natural gas service in their regions. They have shared stories of the struggles communities, industries, families and individuals endure when forced to pay higher costs to meet their energy needs. The time for change has come, and with it the need for regulatory flexibility to help facilitate access to natural gas services to more communities.

***1. What is considered a community in the context of this proceeding?***

8. The Southern Bruce municipalities represent the largest communities by number of customers proposed to be connected by any of EPCOR Utilities Inc. (“**EPCOR**”), Union Gas Limited (“**Union**”), or Enbridge Gas Distribution (“**Enbridge**”). Both Union and

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<sup>2</sup> Pages 8-12 of the April 26, 2016, Pre-Hearing Conference Transcript.

<sup>3</sup> Pages 12-22 of the April 26, 2016, Pre-Hearing Conference Transcript.

<sup>4</sup> Pages 22-35 of the April 26, 2016, Pre-Hearing Conference Transcript.

<sup>5</sup> Pages 36-43 of the April 26, 2016, Pre-Hearing Conference Transcript.

<sup>6</sup> Pages 43-48 of the April 26, 2016, Pre-Hearing Conference Transcript.

Enbridge propose that a community be defined as a non-gas serviced geographic area which consists of a minimum of 50 existing homes and businesses.<sup>7</sup> EPCOR proposed that the Board adopt a more flexible approach to defining a community.

9. The Southern Bruce municipalities believe that a minimum of 50 existing homes and business might be too low. If the purpose of an expansion program is to reach the largest number of new customers, then the focus should be on larger communities first.
10. Regardless of the definition adopted, Southern Bruce submits that the Board should apply a single and uniform definition to EPCOR, Union, Enbridge and any other new entrants.
11. The Southern Bruce municipalities further submit that the Board should mandate that utilities should focus on feasible community expansion projects that would reach the largest number of customers first. Smaller projects should be prioritized later. This would help to maximize the benefit of any community expansion projects across the largest number of new customers.

***2. Does the OEB have the legal authority to establish a framework whereby the customers of one utility subsidize the expansion undertaken by another distributor into communities that do not have natural gas service?***

12. Yes, the Board has the legal authority to employ any method or technique that it considers appropriate to fix just and reasonable rates, and in making an order, to impose such conditions as it considers proper, which conditions may be general or particular in application.
13. This includes legal authority to establish:
  - (a) an expansion reserve funded by a modest volumetric levy on Province-wide sales of natural gas to existing customers as more fully detailed in the evidence of Dr. Adonis Yatchew (an “**Expansion Reserve**”);<sup>8</sup>
  - (b) a made in Ontario ratemaking approach to cross-subsidization, similar to the Ontario approach to rural electrification as more fully detailed in the Southern

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<sup>7</sup> Exhibit R15, pg. 2, lines 10-14.

<sup>8</sup> Exhibit R4, pages. 11-18.

Bruce evidence from Bruce Bacon (known as rural and remote rate protection, or “**RRRP**”);<sup>9</sup>

- (c) a jurisdiction-wide cross-subsidization (across all ratepayers) identified by London Economics in both the Alberta and Ontario electricity industries and the Canadian and US telecom industries;<sup>10</sup>
- (d) the pooling electricity transmission rates in Ontario, as more fully detailed in the evidence from Mr. John Todd;<sup>11</sup> and
- (e) an expansion of telecommunications services to rural and remote areas in Canada through the rate-setting process, as more fully detailed in the evidence of Mr. John Todd<sup>12</sup> and the evidence of George Hariton and Tom Ladanyi,<sup>13</sup>

(collectively, the “**Methods**”).

- 14. In *Advocacy Centre for Tenants-Ontario v. Ontario Energy Board*, 2008 CanLII 23487 (“**Advocacy Centre**”) the Ontario Divisional Court held at paragraph 53 that “the Board is authorized to employ any method or technique that it considers appropriate to fix just and reasonable rates.”
- 15. Although “cost of service” is necessarily an underlying fundamental factor and starting point to determining rates, the Board must determine what are just and reasonable rates within the context of the objectives set forth in Section 2 of the *Ontario Energy Board Act, 1998* (the “**OEB Act**”).
- 16. Section 23(1) of the OEB Act also permits the Board, in making an order, to impose such conditions as it considers proper, and states that those conditions may be general or particular in application.

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<sup>9</sup> Exhibit R13, Bacon Report.

<sup>10</sup> Exhibit R15, Schedule 1, pages 18, 26-33.

<sup>11</sup> Exhibit R13, Todd Report, at page 16.

<sup>12</sup> Exhibit R13, Todd Report, at page 17-20.

<sup>13</sup> Exhibit R16 at pages 13-28.

17. The Divisional Court’s decision in *Advocacy Centre* is not limited in scope to granting jurisdiction to account for income levels in pricing to achieve the delivery of affordable energy to low income consumers. Rather, the Divisional Court’s decision sets out a more general framework to assess the Board’s jurisdiction to set just and reasonable rates within the context of its governing statute. This is demonstrated at paragraph 55 of *Advocacy Centre*, where the Divisional Court cites several illustrative examples, including:
- (a) to further the objective of “energy conservation”, the use of incentive rates or differential pricing dependent upon the quantity of energy consumed, or
  - (b) to further the objective of protecting “the interests of consumers” by taking into account income levels in pricing to achieve the delivery of affordable energy to low income consumers.

The Divisional Court would not have made reference to energy conservation, incentive rates, or differential pricing had its decision been limited to the jurisdiction of the Board to account for income levels in pricing to achieve the delivery of affordable energy to low income consumers.

18. The Divisional Court’s decision in *Advocacy Centre* was cited and confirmed by the Ontario Court of Appeal at paragraph 26 in *Toronto Hydro-Electric System Ltd. v. Ontario (Energy Board)*, 2010 ONCA 284 (CanLII), 99 O.R. (3d) 481 (“**Toronto Hydro**”). The Court of Appeal in *Toronto Hydro* confirms at paragraph 29 that the Board’s imposition of a condition it considers proper must also be guided by the legislative objectives, which for natural gas are set forth in Section 2 of the OEB Act.
19. The courts have recognized that the Board is a specialized expert tribunal with the broad authority to regulate the energy sector in Ontario.<sup>14</sup> In carrying out its mandate, the Board is required to balance a number of sometimes competing interests. It is required to protect consumers with respect to prices and the reliability and quality of gas service, to facilitate the rational expansion of transmission and distribution systems, and to facilitate

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<sup>14</sup> *Toronto Hydro* at para. 12.

competition in the sale of gas to consumers. The legislative intent is evident: the Board has jurisdiction to and primary responsibility for making these complicated assessments and trade-offs when regulating the natural gas sector in Ontario.

20. The jurisdiction to establish a province wide Expansion Reserve, a RRRP for natural gas, or any of the other methods is found in three provisions of Section 2 of the OEB Act.
21. First, Section 2, paragraph 3 of the OEB Act states that the Board's objectives includes "to facilitate the rational expansion of transmission and distribution systems." Certainly the Board has jurisdiction to determine what levels of cross subsidies, and what subsidy mechanisms, would facilitate the rational expansion of the transmission and distribution systems. The Board has done this already, with its EBO 188 policy, which allows for, among other things, a cross-subsidy among a portfolio of projects.
22. An Expansion Reserve, RRRP or any other method designed to facilitate the rational expansion of natural gas would fall directly in scope of this objective as well. Some might argue that the Board does not have a mandate to provide universal service, similar to that of the CRTC. They would note that the Board's objective is limited by the term "rational expansion". However, this would not limit the Board's jurisdiction. Rather, the Board must have the jurisdiction to determine what does and what does not constitute "rational expansion."
23. Second, and unlike the internal utility cross-subsidy model proposed by both Enbridge and Union, a province wide Expansion Reserve, RRRP and the other or any of the other methods are consistent with Section 2, paragraph 1 which states that the Board's objectives includes "to facilitate competition in the sale of gas to users." By ensuring that there is a level playing field among both incumbent utilities and new entrants, the Board would facilitate competition among different utilities that are ultimately vying to sell gas to new users.
24. In this regard, Southern Bruce submits that the Board should reject the proposals of Union and Enbridge that would serve to unduly limit the opportunities for new entrants to complete for natural gas expansion opportunities because those proposals are inconsistent



with Section 2, paragraph 1 of the OEB Act. The Union and Enbridge proposals would unduly discriminate against the Southern Bruce communities, which have selected EPCOR as their preferred proponent to complete natural gas expansion in their franchise areas.

25. Third, Section 2, paragraph 2 of the OEB Act states that the Board's objectives includes "to protect the interests of consumers with respect to prices and the reliability and quality of gas service." An Expansion Reserve, RRRP and the other methods would relate directly to this objective, where eligibility is based upon location and the inherent higher costs of service related to density levels. The assistance from the program would be conferred upon all consumers within a given geographical area. Hence, as explained by the Divisional Court, at paragraph 31 of *Advocacy Centre* (in discussing electricity rate protection), this program serves to mitigate the effect of the cost differential related to geography and remains consistent with a rate making process based upon cost causality.
26. In light of the foregoing, the Southern Bruce municipalities submit that no changes are required to the OEB's jurisdiction to allow the OEB to foster the rational expansion of natural gas service in Ontario.

***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?***

*a. What are the merits of this approach?*

27. A province wide Expansion Reserve, RRRP, and the other Methods have four main benefits.
28. First, each of the Methods would facilitate a cross-subsidy from existing ratepayers which would have the effect of facilitating the rational expansion of the gas distribution system into new areas of the province that are not currently served in a manner consistent with the Government of Ontario's policy objectives.
29. Following the completion of the RFI process, the Southern Bruce municipalities learned that existing regulatory restrictions currently impeded the expansion of natural gas distribution systems into new areas of the province that are not currently served. This is

largely due to the major impediment created by a combination of: (i) an obligation to use current rates for expansion customers; (ii) an obligation to achieve a profitability index of 1.0; and (iii) the requirement for a contribution in aid of construction from the municipalities to fund the difference (which proved to be an insurmountable hurdle for the Southern Bruce communities). While adjustments to the rate setting methodology (such as permitting stand-alone rates for expansion customers), or rebates of municipal taxes, have the effect of narrowing the gap, a cross-subsidy is still required to facilitate the rational expansion of the gas distribution system into new areas of the province that are not currently served, including the Southern Bruce communities.

30. Once a new customer becomes connected to the natural gas expansion system by way of a community expansion project, that customer should also be required to pay into the cross-subsidy to support future expansion projects. This is both fair and appropriate.
31. Second, each of the Methods would encourage rather than discourage competition among utilities for new natural gas expansion projects. Unlike the intra-utility subsidy model proposed by Union and Enbridge, the Methods described above would not create a new, practically insurmountable barrier to new gas utilities entering Ontario. Rather, by making an expansion opportunity open to both new entrants and incumbents, the Methods would promote competition among incumbents and new entrants. Ultimately the proponent with the best proposal would proceed.
32. Third, by encouraging competition for new expansion opportunities, the Board would create competitive tensions that will promote innovation and creativity. This will, in turn, result in more economic and lower cost proposals over time, all of which will facilitate the connection of even more communities to the gas distribution system.
33. The Southern Bruce municipalities have provided the Board with evidence detailing the benefits of competition, having recently run a competitive RFI process.<sup>15</sup> Some of the benefits were specific to the Southern Bruce municipalities. But others are more general benefits of encouraging competition for new expansions, including (i) providing an opportunity for alternative approaches to expansions, which draw from the different

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<sup>15</sup> Exhibit R13, Municipalities Report.

experiences of the different competitors; (ii) providing a reasonable comparison of what these alternate approaches mean in terms of both capital and ongoing operating costs; and (iii) providing a comparison of the effect of different rate design proposals (some of which are more readily able to capture in rates some of the incremental benefit received by expansion customers).

34. Fourth, each of the Methods would socialize the costs of any cross-subsidy across a larger number of customers (all natural gas customers where the Board has jurisdiction over rates) rather than over the customers of a single utility. This has the benefit of ensuring that the customers of one utility are not unduly burdened simply because their utility is more ambitiously pursuing expansion opportunities than another utility. If cross-subsidies are to occur, it is more equitable to socialize those costs across a larger customer base rather than unduly burdening the customers of a single utility. This is the approach taken with Ontario's uniform electricity transmission rates, and with Ontario's rural and remote electricity rate protection program.

*b. How should these contributions be treated for ratemaking purposes?*

35. Any cross-subsidy from existing gas ratepayers to fund expansion projects by an Expansion Reserve should be treated as equivalent to a contribution in aid of construction for ratemaking purposes. The amounts funded through the use of a cross-subsidy should not be included in rate base and utilities should not be permitted to earn a return on amounts financed using this cross-subsidy mechanism. This should be the case regardless of the mechanism the Board ultimately approves for funding the cross subsidy (i.e. Expansion Reserve or intra-utility subsidy). This will have the added benefit of creating an effective incentive on utilities to only rely on a cross-subsidy when absolutely necessary due to project economics.
36. By contrast, any cross-subsidy from existing gas ratepayers to fund expansion projects using a mechanism similar to RRRP should be treated as a revenue offset for the amounts that would otherwise be collected from new expansion customers. This is consistent with the RRRP methodology for electricity rates.

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

37. Yes. If the Board wants to support the objective of expanding natural gas service into regions of the province that are not currently served, then changes to the EBO 188 guidelines for rural, remote and First Nation community expansion projects are required.
38. At a practical level, the issue is how best to reduce the barriers imposed by the overwhelming contributions in aid of construction that are required under the existing EBO 188 regulatory framework. One example of the magnitude of this barrier is the \$86,715,820 CIAC required by Union Gas Limited in its March 2012 proposal to connect the Southern Bruce communities.<sup>16</sup> The Southern Bruce communities, like other Ontario municipalities, do not have this significant amount of funds at their disposal.
39. There is likely no single answer available to solve this problem. Rather, Southern Bruce proposes a balanced approach which combines:
- (a) Requiring a 10 year rebate of the incremental pipeline and property taxes that would otherwise be collected by the municipalities, to help improve project economics and to demonstrate a material financial contribution by the local municipalities;
  - (b) Providing an exemption to the application of advanced reinforcement charges for community expansion projects, which would eliminate a cross-subsidy paid by new ratepayers which benefits ratepayers that do or could utilize the existing system;
  - (c) Allowing for a modest cross-subsidy from existing ratepayers to support the upfront capital costs of expansion projects, without causing undue rate impacts;
  - (d) Allowing for a modest surcharge or higher tariff to be paid by all new customers (including industrial customers) that would benefit from the expansion, without

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<sup>16</sup> Exhibit R13, South Bruce Municipalities Report, Appendix B, Pages 4-5.

unduly eliminating the benefits of conversion from these new customers (i.e. a portion of the financial incentive to convert would need to be maintained by the new customers, otherwise why undergo the upfront conversion cost and effort?); and

- (e) Accounting for provincial taxpayer support through government grant or loan programs to help further improve project economics.

40. In doing so, the Board should be mindful to implement a policy that does not create additional barriers to entry for potential new entrants.

***a) Should the OEB consider projects that have a portfolio profitability index (PI) less than 1.0 and individual projects within a portfolio that have a PI lower than 0.8?***

41. Yes. For the reasons discussed above, the Board should provide an exemption for community expansion projects, and portfolios of community expansion projects, from the PI requirements in the EBO 188 guidelines.

42. Specifically, the Board should allow for a cross-subsidization of community expansion projects that have a PI of less than 0.8 as being in the public interest, provided the cross-subsidies do not cause an undue burden on any individual, group or class of customers.

43. There should be no minimum PI applied to community expansion projects. Rather, when assessing community expansion projects with a PI of less than 1.0, the Board should consider broader public interest factors, including the stage 2 and stage 3 benefits of the project, the demonstrated commitment of the local municipality to support the project with a tax rebate, the level of the surcharge required from expansion customers, a modest cross-subsidy from existing ratepayers, and the presence of any provincial support through government grant or loan programs.

44. This cross-subsidy may come from an Expansion Reserve or from a RRRP model or another method the Board may prefer.

***b) What costs should be included in the economic assessment for providing natural gas service to communities and how are they to be determined and calculated.***

45. Subject to the exemption of advanced reinforcement charges proposed in response to issue 4(e) below, the Southern Bruce communities are in general agreement with the other cost factors that should be considered in economic assessments as outlined in the EBO 188 guidelines.
46. The Southern Bruce communities support Union's proposal to incorporate into revenue projections a proposed temporary expansion surcharge. This would ensure a level playing field is maintained between incumbents, that must comply with EBO 188, and new entrants, that can propose stand-alone rate schedules.
47. Finally, the Southern Bruce communities support Union's proposal to extend the maximum customer forecast period from 10 years to 25 years, to better reflect the actual conversion timeframe given that typical heating equipment has a life span of up-to 25 years.

***c) What, if any, amendments to the EBO 188 and EBO 134 guidelines would be required as a result of the inclusion of any costs identified above?***

48. The Board should amend the EBO 188 and EBO 134 guidelines to:
  - (a) clarify that community expansion projects would be exempt from advanced reinforcement costs (see the response to issue 4(e) below);
  - (b) allow for the inclusion of a temporary expansion surcharge when forecasting revenue; and
  - (c) allow for up to a 25 year customer attachment horizon.

***d) What would be the criteria for the projects/communities that would be eligible for such exemptions? What, if any, other public interest factors should be included as part of this criteria? How are they to be determined?***

49. Any project that meets the definition of a community expansion project (see issue 1 above) should be eligible for these exemptions. In addition, public interest factors should play a greater role in when the Board assesses community expansion projects (see issue 4(f) below).

***e) Should there be exemptions to certain costs being included in the economic assessment for providing natural gas service to communities that are not served? If so, what are those exemptions and how should the OEB consider them in assessing to approve specific community expansion projects?***

50. The Southern Bruce communities submit that projects to expand natural gas service to communities that are not served should be exempt from the obligation to pay advanced reinforcement charges, and that this exemption should be reflected in the economic assessment methodology.
51. The Southern Bruce communities have no objections to including the direct capital cost of the minimum required level of reinforcement of the upstream distribution system required to provide the capacity that is actually required for the new connection, in a manner consistent with the Board's determination in the Wingham Expansion decision.<sup>17</sup>
52. However, advanced reinforcement charges are charged to new expansion customers even though there is adequate capacity available in the upstream distribution system for the expansion, and existing customers have no legal right or entitlement to this available capacity. According to Union, advanced reinforcement charges are charged to notionally account for an acceleration of expected upstream distribution reinforcement timing to allow for other routine connections to the system.
53. We have reviewed the Wingham Expansion decision, included in Exhibit J6.6, and could not find any mention of advanced reinforcement charges by the Board. Rather, the Board takes note of a concern that "such reinforcement may be considered joint use facilities, and as such, should not be to the account of an individual project."
54. While the Board approved the application of an advancement charge in E.B.L.O. 259, 1997, the Board expressly cautioned a paragraph 4.1.13 that the advancement was entirely dependent upon the utility's estimates of demand growth in each of the other communities served by the line.

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<sup>17</sup> E.B.L.O. 253, 1995.

55. There is no obligation imposed on a utility that charges an advanced reinforcement charge to complete the actual advanced reinforcement they charge for. Depending on how circumstances evolve, it might occur that the timing of the reinforcement occurs exactly as originally anticipated and that no advancement ever occurs.
56. There are three additional reasons to exempt community expansion projects from the application of advanced reinforcement charges.
57. First, advanced reinforcement charges make community expansion projects less economic. It is a regulatory construct that creates yet another barrier to discourage expansions of natural gas service to communities that are not currently served.
58. Second, allowing for advanced reinforcement charges may have an anti-competitive effect. Incumbents have discretion over and will know what their internal reinforcement plans are, and will know whether or not a particular expansion design will attract an advanced reinforcement charge. New entrants would not have access to the reinforcement plans of an incumbent, and would be put at a competitive disadvantage when considering expansion design options. The proposal by Union to limit advanced reinforcement charges to a 3 year window has a similar anti-competitive result, and should be rejected. Union confirmed during cross-examination that of the 29 community expansion projects proposed in EB-2015-0179, the only project that Union identified that is affected by an advanced reinforcement charge under the 3 year proposal is the Southern Bruce project.<sup>18</sup> This is the only project on Union's list that is currently being pursued by a new entrant and competitor.
59. Third, advanced reinforcement charges represent a cross-subsidy from customers of the proposed community expansion to the benefit of customers (both new and existing) of the existing system. Before allowing for cross subsidies from existing customers to support new customers, the Board should first eliminate subsidies that flow in the opposite direction.

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<sup>18</sup> Tr. Volume 6, May 12, 2016 at pg. 154, lines 12 to 25.



60. Specifically, advanced reinforcement charges are paid solely by new customers served by system expansions. However, the advanced reinforcement does not solely benefit these new customers. Rather, the advanced reinforcement also benefits customers (both new and existing) of the existing System. However, these customers are not being required to share in the advancement costs even though they benefit.
61. Customers in areas with existing service have no legal right or entitlement to the excess capacity in the pipeline system.<sup>19</sup> Without a legal entitlement, excess capacity is open to be utilized by new customers in the existing franchise area or new customers in a community that is not currently served. In the former case, advancement charges likely would not be levied. Rather, the reinforcement would be completed when required and all customers that benefit from the reinforcement would contribute to those costs once in service. By contrast, new customers in a community that is not currently being served are being asked to pay an additional advancement charge. Existing customers also benefit from the utilization of excess capacity in the existing system, as the total costs of the system are spread over a larger customer base.

***f) Should the economic, environmental and public interest components in not expanding natural gas service to a specific community be considered? If so how?***

62. Yes.
63. Pursuant to Section 2 of the OEB Act, the Board has been charged with a responsibility to act in the public interest to, *inter alia*, facilitate the rational expansion of transmission and distribution systems. This includes considering the economic, environmental and public interest components of not expanding natural gas service to a specific community.
64. To achieve this, Southern Bruce submits that the Board should give more weight to stage 2 and 3 benefits (as defined in the EBO 134 guidelines) when considering community expansion projects that may have a PI of less than 1.0. These second and third stage benefits should be designed to quantify any economic, environmental and other public interest factors not considered as part of the stage one analysis.

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***5. Should the OEB allow natural gas distributors to establish surcharges from customers of new communities to improve the feasibility of potential community expansion projects? If so, what approaches are appropriate and over what period of time?***

65. The Southern Bruce municipalities submit that the Board should permit a modest surcharge from customers of new communities to help improve the feasibility of potential community expansion projects. This surcharge should be available as an option for both new entrants and incumbent natural gas utilities.
66. Such a surcharge must be a modest amount and should not be the only financing tool the Board makes available. High surcharges would reduce the financial incentive for new customers to switch to natural gas, lowering conversion rates and further increasing the costs to those customers that do switch. Any surcharge should be set at a level that does not threaten the economics of conversion or the overall economic viability of the expansion project.
67. High surcharges would also create a disparity between the rates paid by most of the province and the new expansion customers. One approach to solve this problem is to link, formulaically or otherwise, the value of the cross-subsidy paid by existing ratepayers for all of the projects under consideration to the value of the surcharge charged to new ratepayers who benefit from each particular project. The larger the cross-subsidy, the larger the surcharge. The smaller the cross-subsidy, the smaller the surcharge. This is similar in concept to the rural rate differential used to calculate RRRP for electricity.
68. The surcharge should expire after a fixed period of time. The Southern Bruce municipalities submit that the minimum period that such a surcharge should be in place is forty (40) years. This would maximize the benefits associated with the surcharge in terms of improving project feasibility. It would also ensure that there are no new inter-generational inequities created by charging the surcharge for a shorter period (i.e. if the surcharge is only in place for 10 years, then a customer that connects in year 11 would benefit from the expansion but would not have to pay any of the incremental surcharge associated with the expansion). Rather, all of the customers that benefit from the expansion over its 40 year life would have to contribute the surcharge.

**6. Are there other ratemaking or rate recovery approaches that the OEB should consider?**

69. Yes. As an alternative to the Expansion Reserve, the Board should also consider an approach similar to the RRRP that is used in Ontario to subsidize rural and remote electricity rate consumers. As more fully detailed in the evidence of Bruce Bacon,<sup>20</sup> and unlike the creation of a new province wide Expansion Reserve, the RRRP is a made in Ontario ratemaking approach to facilitating cross-subsidies.
70. The principal benefit of a RRRP approach is that it is simple. Once the ratemaking formulas and procedures are established that facilitate permissible cross-subsidies for the rational expansion of the gas distribution system, the ongoing administrative burden is *de-minimis*. The formulas and procedures would be applied by the regulated utilities when applying to set new gas distribution rates. The Board would not have to create or administer a new fund or Expansion Reserve. Rather, the Board would be tasked with confirming that the formulas and procedures were correctly applied by utilities as part of an application for just and reasonable rates.
71. An illustration of the relative simplicity of the RRRP approach is shown at Exhibit S13 pages 69-70, in response to Exhibit R13.South Bruce.SEC.7.
72. The Board should also allow utilities to propose stand-alone rates for an expansion region. This is particularly relevant since a new entrant will not have an existing rate structure in Ontario, and any rates it proposes for an expansion region will be *de facto* stand-alone rates. In these circumstances, the use of a surcharge makes little sense since there are no existing rates against which to calculate or charge the surcharge. Since this option would be made available to new entrants, in the interest of fairness, the Board might consider also allowing this option for incumbent utilities. To assist the Board in determining whether or not incumbent utilities truly need to have the option to establish stand-alone rates, it would be helpful if the incumbent utilities that are asking for this right explain what they seek to achieve through the use of stand-alone rates that could not be achieved through the use of an equivalent surcharge charged to new customers. We cannot think of a circumstance where stand-alone rates would be required for incumbents

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<sup>20</sup> Exhibit R13, Bacon Report.

if they could charge an equivalent surcharge to new customers. We believe the Board would be assisted if incumbents could detail the rationale behind their request.

***7. Should the OEB allow for the recovery of the revenue requirement associated with community expansion costs in rates that are outside the OEB approved incentive ratemaking framework prior to the end of any incentive regulation plan term once the assets are used and useful?***

73. Southern Bruce supports the Board's allowance of the recovery of revenue requirement associated with community expansion costs in rates outside of the OEB approved incentive ratemaking framework.
74. Specifically, by allowing recovery of community expansion project costs in rates prior to the end of any incentive regulation plan term, the Board would facilitate prompt action on new community expansion opportunities. Community expansion costs would, of course, only be included in rates once the assets are used and useful.
75. By contrast, if expansions were only permitted within the scope of the current OEB approved incentive ratemaking framework, this would have the effect of delaying expansion projects that could otherwise proceed immediately. Such a delay would need to be justified by the underlying policy rationale for using the incentive ratemaking framework. It is not clear to the Southern Bruce municipalities that such a delay would be warranted.
76. Since the Southern Bruce municipalities are proposing an approach where community expansion projects would be competitive opportunities, the Board can rely on the presence of competition to enforce the discipline on expansion costs rather than relying on a substitute for competition, i.e. an incentive ratemaking framework. Notably, the Board would not have similar comfort if it were to adopt the intra-utility cross-subsidy models proposed by Enbridge and Union, which serve to discourage competition and further entrench incumbent utilities.
77. By allowing recovery of community expansion project costs in rates prior to the end of any incentive regulation plan term, the Board would also reflect the reality that this generic hearing may result in a fundamental change to the regulatory framework related

to community expansion projects that were simply not foreseeable at the time either incumbent utility started on their current incentive regulation plan.

***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?***

78. The Southern Bruce communities have proposed certain changes to the standard form of Municipal Franchise Agreements entered into with EPCOR. These agreements have been filed with the Board, and will be the subject of a thorough review pursuant to a separate proceeding. The changes were the product of a negotiated arrangement with EPCOR, they are specific to the particular facts and timing of the EPCOR and Southern Bruce arrangement. Southern Bruce submits that these changes are not appropriate for the purposes of a more general purpose served by the Model Franchise Agreement.
79. However, the Board should consider making the following three changes to its Model Franchise Agreement.
- a. *Clarify that the Model Franchise Agreements are non-exclusive.*
80. The first change would be intended to address the informational asymmetry that exists between smaller municipalities, on the one hand, and gas utilities, on the other. Not all municipalities are going to have the capacity to hire expert legal and consulting advisors to educate them on the Ontario natural gas regulatory framework like the Southern Bruce municipalities have done. This is likely why Southern Bruce is among the few municipalities that have filed expert evidence or have been consistently represented by counsel throughout this regulatory process.
81. Given this, Southern Bruce submits that the Board should make it clear in the terms of the Model Franchise Agreement that the agreement, and any resulting certificate of public convenience and necessity, are non-exclusive.
82. As Enbridge correctly notes in its submissions, this is already true at law. However, other parties may debate this as part of this generic proceeding. And if there is room for debate, this means that there is currently uncertainty.

83. In light of this uncertainty, Southern Bruce submits that the Board should make its policy related to the issuance of multiple franchise agreements perfectly clear – either as a term of the Model Franchise Agreement (non-exclusivity) or as part of some more general guidance issued by the Board. This would eliminate room for debate. Municipalities would be made aware in a clear and unambiguous manner that they are free to issue multiple franchise agreements, and that the Board will adjudicate disputes between utilities to the extent there is overlap or conflict.
- b. *Add a sunset clause into the Model Franchise Agreements that links the term of the agreement to the presence of an active and valid certificate of public convenience and necessity.*
84. Second, the Board should introduce a sunset clause into its Model Franchise Agreement in the event a utility fails to follow through on its promise to construct a natural gas expansion in the franchise area. The Board already includes a sunset clause in its certificate of public convenience and necessity. Southern Bruce submits that the Board should mirror this by having the Model Franchise Agreement automatically terminate after one (1) year unless there is an active and valid certificate of public convenience and necessity in place. This would link the term of the Franchise Agreement directly to the term of the Board’s certificate of public convenience and necessity.
85. Parties wishing to keep the franchise and certificate in place would need to apply for periodic renewals of the certificate if they have not yet begun construction. This, in turn, gives the municipalities and other interested parties a forum in which they can question the utility as to why construction has not yet begun. If there are not good responses, the Board could deny a request for renewal of a certificate of public convenience and necessity. And only if the Board denies request for a renewal, or if the utility chooses not to seek a renewal in the first place, would the Franchise Agreement terminate.
86. Some might argue that the municipalities could simply issue a second franchise agreement if the first utility fails to perform, and that a termination clause is not necessary. However, this fails to recognize the practical reality that by issuing two competing franchise agreements for the same region, a municipality would create

incremental risk and uncertainty that would very likely deter, and possibly prevent, a second utility from even considering the expansion opportunity.

87. Put simply, why would a second utility (such as a new entrant) incur the costs or risk associated with undertaking a new expansion project if the first utility, which already has a valid franchise agreement, can easily resurrect that agreement in the face of imminent competition in an attempt to preserve its existing franchise area? The answer is simple: they would not.
88. As it currently stands, without a sunset clause, municipalities are beholden to a utility for a full 20 years regardless of whether or not that utility follows through on their promise to build a natural gas expansion in that municipality.
  - c. *Expressly allow for project or fact specific clauses to be added to the Model Franchise Agreement.*
89. Third, the Board should expressly allow for project or fact specific clauses to be added to its Model Franchise Agreement. That is to say, the model agreement should not be fixed in stone. Rather, the model should allow for sufficient flexibility to be adapted by both the utility and the relevant municipality if and when the context requires. Any changes would only occur if they are mutually agreed to by the utility and the municipality. And any changes would be reviewed by the Board as part of an application for approval of the franchise.
90. This approach is intended to reflect the fact that the current Model Franchise Agreement is really an operational document. And perhaps this is all that is needed for some parties. However, to the extent that a Franchise Agreement is being issued based upon certain promises made by a utility to a municipality, the parties should be open to clearly document those promises in legal terms directly in their franchise agreement.
91. Some utilities may prefer, for their own administrative purposes, to maintain a standardized form of franchise agreement. Those utilities would still be at liberty to reject any requests to modify their preferred form of agreement. However, other utilities

might be more flexible in responding to the particular needs or requests of a municipality, and it would be their prerogative to do so.

92. Municipalities enter into these franchise agreements based upon certain understanding of the project that is being proposed. For example, a municipality may issue a franchise agreement on the understanding that the project will achieve certain milestones by certain dates. If this is truly the case, it should be open to the parties to define those milestones contractually, and to define what happens if those milestones are not met. As another example, a municipality may decide to issue a franchise agreement on a particular understanding of project scope (that certain communities would be served by the proposed expansion). Finally, a municipality may decide to issue a franchise on the promise of the payment of a royalty fee (similar to what is done in BC and Alberta), which might be particularly true if the municipality is also being asked to provide a rebate of all of the municipal property or pipeline taxes they would otherwise receive over an extended period of time.

93. By expressly permitting customizable terms in the Model Franchise Agreement, the Board would simply allow the parties to make what are currently general understandings into concrete legal terms. It would be up to the parties to make adjustments to an operational model agreement to fit their particular circumstances. And any of these context specific clauses included in a franchise agreement would ultimately be the subject of OEB review and scrutiny as part an application for approval of the franchise agreement and issuance of a certificates of public convenience and necessity.

*d. Should the Municipal Franchise Agreement approval process be accompanied by a selection process?*

94. Please see the submissions in respect of issue #9 below.

***9. What types of processes 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)***



95. When considering each of the other issues on the issues list, Southern Bruce submits that the regulatory approach the Board ultimately adopts should not create new barriers to the introduction of new entrants to provide service to communities that do not have access to natural gas. There would be little gained from hearing submissions about new processes that would facilitate the introduction of new entrants if, as one example, an intra-utility subsidy model is adopted which gives incumbents a tremendous advantage and effectively precludes new entrants coming to Ontario.
- a. Should the Municipal Franchise Agreement approval process be accompanied by a selection process? Who should conduct the process and what should the selection criteria be?*
96. The Southern Bruce municipalities submit that the Board should encourage, but not require, municipalities to hold competitive procurement processes (RFPs, RFQs, RFIs) prior to issuing a franchise agreement to facilitate the introduction of new entrants to provide service to communities that do not have access to natural gas.
97. Some municipalities may not want to hold a competitive procurement process. Those municipalities should be free to choose to sole-source a franchise agreement if that is their preferred approach.
98. However, if they choose to do so, municipalities should be encouraged by the Board to hold a competitive procurement prior to issuing a franchise agreement, both to encourage creative proposals from incumbents as well as to facilitate the introduction of new entrants.
99. A key aspect of the competitive procurement process is that the confidentiality of the bids that are submitted must be maintained. This is standard practice for the vast majority of competitive procurements, and for good reason. It allows proponents to put their best proposal forward without fear of their designs or bids getting into the hands of their competitors or otherwise undermining their competitive positioning. This is particularly important given the dynamic interplay between competing technologies: pipeline, CNG,

LNG and storage based solutions. Creative solutions that can drive down overall costs should be facilitated by maintaining the confidentiality of these procurement process.

100. Confidentiality is also particularly important to encourage the introduction of new entrants into Ontario. If bids are not maintained in confidence, and recognizing the natural incentive for incumbents to aggressively defend their (assumed) service territory, there is a very real likelihood that incumbents will devote considerable resources to attacking new entrant proposals. By contrast, new entrants are unlikely to devote similar resources to attacking incumbent proposals. This would result in an uneven playing field.
101. Empowering municipalities to undertake a competitive procurement process is consistent with the Board's stated objective to increase local community involvement in OEB processes. On May 13, 2016, the Board rolled out its plan to empower Ontario's energy consumers a stronger voice,<sup>21</sup> which included:
- (a) holding community meetings to give local customers a way to meaningful provide input; and
  - (b) piloting the use of local community based representatives to gather information from and advocate on behalf of local customers.
102. As the democratically elected representatives of the local community, the municipalities are best positioned to represent the interests of local customers. The municipalities are directly connected with the local residents, businesses and institutions. On May 9, 2016, this Board panel heard directly from the mayors of each of the three Southern Bruce communities. They spoke in detail about the results of their efforts going door-to-door, speaking with local businesses and speaking with local institutions about the need for natural gas in their communities.<sup>22</sup> There is no one that is better positioned to represent the interests of local customers than the democratically elected representatives of those local customers.

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<sup>21</sup> <http://www.ontarioenergyboard.ca/OEB/Industry/Regulatory+Proceedings/Hearings/Participating+in+a+Hearing/Consumer+Voice>

<sup>22</sup> Transcript, Volume 3, May 9, 2016 at pg. 144, line 15 to pg. 150, line 18.

103. The *Municipal Franchises Act* reflects the important role that local municipalities must play in this process. This is why municipalities are empowered, in the first instance, to issue franchise agreements to prospective natural gas distributors. The Board still plays an important role in approving those franchises after they are issued. But given this clear legislative framework, local municipalities should continue to have discretion to decide what (if any) processes it wants to undertake prior to issuing a new franchise agreement.
104. Municipalities have been sole-sourcing franchise agreements to utilities for years, and the Board has not inquired into the methodology or processes used by those municipalities to arrive at those sole sourced decisions.
105. The only thing that would change is that rather than sole sourcing a franchise agreement to Union or Enbridge, municipalities would also have the option of undertaking a more rigorous competitive procurement process prior to issuing a franchise agreement.
106. In conducting their competitive procurement, the Southern Bruce communities had the benefit of advisors with expertise in the gas industry. However, the Board may consider it advisable to provide guidance to support municipalities that elect to undertake a competitive procurement. This guidance might include criteria which the municipalities can use prior to issuing a franchise agreement.
107. The criteria should reflect the uncertainty at this very early stage in a proposed expansion project. The evaluation criteria should be weighted in favour of factors that are objective, known, and provable at the time the competitive procurement is undertaken. In the Southern Bruce example, this included:
  - (a) the technical qualifications of the proponent team to undertake the proposed expansion;
  - (b) the financial capability of the proponent team to undertake the proposed expansion;
  - (c) the experience of the proponent team in other projects internationally; and
  - (d) the feasibility of, and risks associated with, a proposed expansion solution.

108. Technical qualifications, financial capability and experience are key criteria at this early stage of the process. They are objective, known and provable with supporting evidence at the time the competitive process is undertaken. They are also similar to the criteria that the Board considers when asked to approve a franchise agreement or grant a certificate of public convenience and necessity.
109. The feasibility of, and risks associated with, a proposed solution are also relevant considerations. This factor might take into account the inability of a municipality to finance a costly contribution in aid of construction, meaning the proposal is not feasible from a practical perspective. This factor might also take into account the risks associated with pursuing an innovative but otherwise untested or novel solution.
110. Secondary factors might include the scope of the proposed expansion, the forecasted costs of the expansion, or the forecasted rates for new customers. However, the weighting associated with these factors should be lower – to reflect the fact that very little of the design work is completed, that project scope, costs and rates will all likely change as assumptions are changed and a utility proceeds to crystalize a specific design, apply for leave-to-construct, construct the expansion and ultimately apply for just-and-reasonable rates.
111. The Board should reject the suggestion by Union that the focus should be primarily on rates. While incumbent utilities may propose a rate structure based on postage stamp rates, where the costs associated with any one expansion project would barely affect those rates, new entrants would be have to submit proposals based on stand-alone rates which have yet to be approved by the Board. It would be difficult to compare apples to apples. If the Board were to focus unduly on rates at this early stage, it would bias the selection in favour of incumbents at the expense of new entrants which may otherwise have a better, lower cost proposal.
112. Finally, the Board should allow for the flexibility to permit municipalities to add their own, context specific, evaluation criteria. In the Southern Bruce example, a proponent's flexibility in respect of exploring different ownership options was an important consideration for some (not all) of the Southern Bruce municipalities. Other criteria that

are responsive to local needs or context should not be precluded by the Board in its guidance.

b. *How would the needs of large users be considered?*

113. Because of their direct accountability to local customers, municipalities are best positioned to balance competing local interests and to determine whether a sole source or competitive procurement is preferable. Municipalities are also best positioned to evaluate competing proposals in a manner that makes the most sense for the community as a whole, including residential customers, commercial customers and large users.
114. The municipalities should consult regularly with prospective large users about the efforts to bring natural gas services to the community. Large users may also be involved in committees to advise the municipalities of their particular needs. This is consistent with the importance those large users play both in the local economy and in supporting expansion project economics.
115. However, the municipalities should not be obligated to give large users a veto over their decision making authority granted pursuant to the *Municipal Franchises Act* to issue and enter into a franchise agreement. Rather the municipality must be able to preserve the independence, integrity, and, if necessary, the confidentiality of their procurement processes, whether a competitive procurement or a sole source tender.
116. An industrial user may prefer a proposal that is not practically feasible, such as one that requires the municipalities to pay a substantial contribution in aid of construction to support an expansion, because the proposal results in lower rates for that industrial customer.
117. An industrial user may also prefer a proposal that requires all expansion customers to pay a surcharge, with the sole exception of that industrial customer. Again this would result in lower rates for that industrial customer, but at the cost of other expansion customers who do pay a surcharge and existing customers who pay a cross-subsidy.

118. An industrial user may also prefer a particular cost allocation and rate design proposal, which allocates the bulk of expansion costs to other classes of customers and only charges the industrial user for any incremental costs after the expansion is complete. Notably, these industrial customers would benefit directly from an expansion even though the incremental costs involved to connect them may be *de minimis*. Again this would result in lower rates for that industrial customer, but at the cost of other expansion customers who do pay a surcharge and existing customers who pay a cross-subsidy.
119. Ultimately, a municipality, as the democratically elected representatives of the local community, should have the authority to enter into franchise agreements without giving industrial users a veto.
120. The interests of industrial users will best be reflected through arms-length negotiations with the utility that is proposing the expansion. Since an industrial user is not obligated to connect to a proposed expansion, they can always refuse an offer. And since an industrial user may account for a large portion of expansion volumes, they already have bargaining power with the utility proposing service. And if a large user still has concerns with a utility's proposal, it can always intervene in an application to establish just and reasonable rates to raise its concerns directly with the Board.

*c. What role would the Board play?*

121. The Board would, and should, continue to play a very important role, by:
  - (a) reviewing and approving any franchise agreement that is entered into (whether through a sole source or a competitive procurement) in accordance with the *Municipal Franchises Act*;
  - (b) assessing the capability of utilities (whether new entrants or incumbents) prior to issuing a certificates of public convenience and necessity in accordance with the *Municipal Franchises Act*;
  - (c) assessing particular designs and proposals prior to issuing leave to construct in accordance with the *OEB Act*; and

- (d) assessing costs and outcomes prior to approving just and reasonable rates in accordance with the *OEB Act*.
122. While there is nothing currently prohibiting municipalities from undertaking a competitive procurement rather than sole sourcing franchise agreements,<sup>23</sup> the Board should also take steps in its decision in this generic proceeding to actively encourage but not require municipalities to undertake competitive procurement processes to facilitate the introduction of new entrants into Ontario.
123. These steps would include removing a number of barriers that may discourage, rather than encourage, municipalities from undertaking competitive procurements.
124. Specifically, while the Board does not currently second guess the decision making process of the municipalities that choose to sole source a franchise agreement, some parties have suggested that the Board should start second guessing the decision making process of municipalities that choose to undertake a more rigorous competitive procurement prior to entering into franchise agreements. This suggestion should be rejected. It creates regulatory uncertainty for municipalities, which may refuse to undertake a competitive procurement if they know the process will not be confidential or their decisions will be second guessed. Losing bidders should not be allowed to co-opt the Board's regulatory processes in an attempt to alter the outcome of a competitive procurement.
125. The Board considered, and ultimately rejected, similar arguments in its Combined MAADS Decision (RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257) at pages 8-10. In that decision, when considering whether to approve or deny specific transactions, the Board determined that the "how" and the "why" that led to those specific transactions were not relevant considerations. In a franchise application, where the franchise agreement and the capabilities of the selected utility are under consideration, the "how" and "why" that led to that franchise agreement with that utility,

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<sup>23</sup> As is detailed in evidence, the competitive RFI process held by the Southern Bruce municipalities worked well and provided several benefits. See Exhibit R13, Municipalities Report.

whether it was a sole source arrangement or a competitive procurement, have never been and should continue to be ruled as out of scope in those applications.

126. This is particularly concerning to the Southern Bruce municipalities. Their procurement has resulted in the selection of EPCOR, the first new entrant into Ontario in years. Parties that are unhappy with this outcome are now trying to investigate and challenge this outcome. The Board witnessed this with the disputed interrogatories in this generic proceeding.<sup>24</sup> The Southern Bruce municipalities may never have undertaken a competitive procurement if the confidentiality of their procurement process would be breached, or the integrity of their decision making process was going to be second guessed. And this might be the very outcome that certain parties are attempting to achieve.
127. Southern Bruce submits that the Board should clearly signal that the confidentiality of competitive procurements undertaken by municipalities prior to issuing franchise agreements will be preserved.

*d. What are the merits of this approach?*

128. The first advantage of this approach is that it delegates the decision of whether or not to run, and the responsibility to run (if they choose to do so) a competitive procurement process to the appropriate municipality. The municipalities, rather than the Board, would undertake the administrative burden associated with running a procurement. Municipalities routinely run competitive procurements, and are well positioned to do the same for natural gas expansion services. To the extent a municipality lacks certain expertise, the municipality can retain experts to advise them (as the Southern Bruce municipalities have done). Ultimately, the municipalities are also best positioned to reflect the interests of local customers in the decision making process.
129. The second advantage of this recommended approach is that it has been proven to work. The Southern Bruce RFI process resulted in the selection and issuance of franchise

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<sup>24</sup> See Exhibit S13. South Bruce.Enbridge.1(b), Exhibit S13.South Bruce.SEC.3, Exhibit S13.South Bruce.SEC.4, Exhibit S13.South Bruce.Union.1(a), Exhibit S13.South Bruce.Union.2(a), Exhibit S13.South Bruce.Union.3(a), and Exhibit S13.South Bruce.Union.4(a).



agreements to EPCOR, the first new entrant into the Ontario natural gas distribution sector in years. Unlike any other proposals the Board may be asked to consider, the competitive procurement undertaken by the Southern Bruce municipalities is the only approach that has actually been proven to attract the interest of new entrants to Ontario.

130. EPCOR has since taken an active role in this generic hearing, providing expert evidence and proposals that differ from those of Union and Enbridge. This illustrates yet another benefit of competition – it serves to enhance the debate in the regulatory space. The Board has the benefit of at times overlapping, and at times contrasting evidence and proposals from each of EPCOR, Enbridge and Union. Ultimately this can only lead to better, more well informed, decisions.
131. The third advantage is that it is the simplest approach. It does not require the Board to undertake any significant new responsibilities nor does it require an overhaul of the existing regulatory framework. Municipalities would continue to be responsible for entering into franchise agreements with preferred proponents (whether sole sourced or competitively procured) in accordance with the *Municipal Franchises Act*. And the Board would continue to be responsible for either approving or rejecting those franchise agreements, determining whether or not to issue a certificate of public convenience and necessity, approving or denying leave to construct applications, and establishing just and reasonable rates.
132. The fourth advantage is that it actively involves municipalities, and through them, local consumers in natural gas expansion opportunities and the Board’s regulatory processes. Expanding natural gas into the Southern Bruce communities was a key election topic during the last two municipal elections.<sup>25</sup> With public town halls, council meetings, debates and door-to-door conversations – municipalities are best positioned to actively engage with local consumers to discuss the possibility of bringing natural gas service into the community.
133. The fifth advantage is that it allows for the careful consideration and comparison of various alternative proposals to provide natural gas service to a community. These

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<sup>25</sup> Transcript, Volume 3, May 9, 2016 at pg. 145 lines 8-13, pg. 149 lines 8-10,

proposals can vary by technological solution being proposed, the design and phasing decisions, and ultimately costs. Different proposals will leverage the different experiences and expertise of different proponents. Some may focus on pipelines. Others on LNG, CNG or storage. Still others on some combination of each. Finally, proposals may also vary based on different proposed approaches to cost allocation and rate design. Municipalities are best positioned to weigh all of these considerations, and to make a decision that will lead to the best outcome for the constituency that elected them into office, the local consumers that do not yet have gas service.

***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?***

134. The Ontario Government's proposed cap and trade program will positively impact any alternative framework that the Board may establish to facilitate the provision of natural gas services in communities that do not currently have access, by creating an additional financial incentive to switch from fuels with a higher carbon intensity to fuels, like natural gas, with a lower carbon intensity.

***11. 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?***

135. Assuming the Government's proposed cap and trade program prices carbon consistently across all fuel types, this means that the estimated savings to switch from an alternative fuel to natural gas will be higher, which is likely to have a positive impact on conversion rates, as new customers have an opportunity to switch from higher carbon intensive fossil fuels for heating such as oil or wood to a lower carbon intensity fuel, being natural gas.

***12. How should the OEB incorporate the Ontario Government's recently announced loan and grant programs into the economic feasibility analysis?***

136. The details of these programs have not yet been published. Consequently, it is somewhat speculative to assess how the funds should be accounted for in the economic feasibility analysis.

137. One possibility is that the funds from the programs would be paid directly to the customer (either as a grant or a low-cost loan) and used to support conversion costs for new customers in the expansion area. If this were to occur, then the programs should be reflected in the in the economic feasibility analysis by an increase in forecasted revenues, as one of the major barriers to conversion is removed or reduced, thereby improving project economics for all expansion projects.
138. It is the submissions of the Southern Bruce municipalities that this is the optimal use of these government funding sources. By focusing Government loan and grant programs on supporting conversion costs, the Board would retain sole discretion over what constitutes a rational expansion, including the level and allocation of any cross-subsidy. Only once a project was determined to constitute a rational expansion by the Board would a customer be eligible for the Government loan or grant programs. Since the details of the programs would be known at the outset, the existence of the programs could be taken into account during the load forecast stage as part of the economic feasibility analysis.
139. Another possibility is that any grant or loan would be used to support the capital costs of the expansion, but the grant or loan is given to the municipality. If this were to occur, then they should be treated as a contribution in aid of construction by the utility for ratemaking purposes and should be applied against the gross capital cost of the project in the economic feasibility analysis.
140. Yet another possibility is that a grant or loan would be used to support the capital costs of the expansion, but the grant or loan is given directly to the utility. If this were to occur, then the grant should be treated as a contribution in aid of construction by the utility, while the savings resulting from the lower cost debt should be reflected in the economic feasibility analysis.

## **B. CONCLUSIONS**

141. On February 17, 2015 the Minister of Energy wrote to the Board to “*encourage the Board to continue to move forward on a timely basis on its plans to examine opportunities to facilities access to natural gas services to more communities, and to reiterate the government’s commitment to that objective.*”

142. Through this hearing process, the Board has heard about how the current regulatory construct serves as a barrier to expanding access to natural gas services to more communities. In particular, the requirements which collectively result in communities being asked to fund contributions in aid of construction that are onerous have the practical effect of prohibiting the vast majority of new expansions of the natural gas service.
143. Additional regulatory flexibility is required to realistically facilitate access to natural gas services to more communities in Ontario.
144. Finally, while the municipalities appreciate the complexity of the issues involved, time is of the essence for the Southern Bruce communities. We respectfully request that the Board issue its decision on this matter as soon as practical after all submissions have been filed.

All of which is respectfully submitted this 20th day of June, 2016.

*Original signed by J. Mark Rodger*

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J. Mark Rodger

*Original signed by John A.D. Vellone*

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John A.D. Vellone

Counsel to the Southern Bruce Municipalities.

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