



ONTARIO ENERGY BOARD

OEB STAFF SUBMISSION

**Ontario Energy Board Proceeding
On Natural Gas Community Expansion
EB-2016-0004**

June 20, 2016

1. Background

In the Ontario Government's 2013 Long-Term Energy Plan, the Government stated that it would look at opportunities to expand natural gas service within the Province to areas that are not currently served. On February 17, 2015, the Ontario Minister of Energy in a letter to the Chair of the Ontario Energy Board (OEB) encouraged the OEB to examine opportunities to facilitate access to natural gas services to more communities. On February 18, 2015, the OEB issued a letter stating that it will hear requests for regulatory flexibility or appropriate exemptions in the context of an application made for approvals pertaining to expansion projects. The OEB invited parties with the appropriate technical and financial expertise to propose, within their application, options to facilitate community expansion.

In response to the letter, Union Gas Limited (Union) filed an application (EB-2015-0179) in July 2015 with the OEB seeking approval to provide natural gas service to certain communities that do not have access to natural gas. In that application, Union proposed alternative approaches to recover revenues in order to meet the investment needs to expand natural gas service to certain communities in Ontario.

Union indicated that under its proposal, it could complete approximately 29 projects to provide natural gas service to 18,000 homes and businesses in 34 communities at an estimated cost of \$135 million.

Based on the submissions of the parties in the Union proceeding, the OEB through a letter dated January 20, 2016, informed all parties that it intended to proceed with a generic hearing on its own motion as the issues raised by all the parties were common to all gas distributors and new entrants seeking to provide gas distribution services in communities that do not have access to natural gas. The OEB noted that a generic proceeding would allow it to establish a common framework and provide guidance to all entities that wish to provide gas distribution services in communities across Ontario.

The OEB therefore decided to establish a generic hearing on its own motion to deal with these common issues. The OEB decided to put Union's application on hold until the completion of the generic hearing. The OEB further determined that Union's application and evidence would form part of the record of the generic proceeding and all parties that were granted intervention status in Union's proceeding would be deemed as intervenors in the generic proceeding.

Accordingly, the OEB issued a Notice of Hearing for the generic proceeding on February 5, 2016. In Procedural Order No. 2 issued on March 9, 2016, the OEB

determined a final Issues List for the proceeding and set out the process for filing evidence and discovery of that evidence. The OEB also scheduled an oral hearing in the procedural order.

The OEB held an oral hearing from May 5, 2016 until May 13, 2016. At the end of the hearing, the panel indicated that they would provide for two rounds of submissions and would provide further guidance on characterization of the submission that would best inform the panel.

The OEB issued Procedural Order No. 3 on May 30, 2016 setting the timelines for the two rounds of submissions and posed some specific questions that the parties should respond to in their submissions.

The submissions below reflect observations and concerns of OEB staff on the evidence submitted by all the parties and the issues raised at the hearing.

2. Evidence of Parties

Union completed an Opportunity Assessment in 2014 to understand the potential scale of a broader community expansion effort. The assessment identified un-serviced towns, villages or hamlets from which municipal customers or potential customers had inquired about natural gas service. Through this Opportunity Assessment, Union identified a total of 103 potential projects that could provide natural gas service to over 45,000 homes and businesses in 138 communities.

Union in its initial application (EB-2015-0179) proposed the following framework to recover costs related to providing natural gas to specific communities identified in its application:

- A Temporary Expansion Surcharge (TES) rate to collect contributions from customers attached in the new communities. Union proposed a TES charge of \$0.23 m³. This amount is based on a typical residential customer achieving a payback period of about 4 years on the cost of equipment conversion or replacement. The TES would be in place between 4 to 10 years based on feasibility.
- An Incremental Tax Equivalent (ITE) mechanism to collect contributions from municipalities of the new communities. The quantum of the ITE would be based on the estimated value of incremental property taxes collected from the utility as a result of the community expansion project. Union proposed that the term of the ITE would match the term of the TES.

- An exemption from E.B.O. 188 guidelines that would allow individual community expansion projects to proceed at a Profitability Index (PI) of 0.4 or greater.
- An exemption of community expansion projects from E.B.O. 188 Investment Portfolio and Rolling Project Portfolio requirements. The current E.B.O. 188 guidelines requires that individual projects must meet a minimum threshold PI of 0.8 and the Rolling Project Portfolio (RPP) which represents all distribution system expansion projects in a given year must meet a minimum target PI of 1.0 and an Investment Portfolio target of 1.1. A PI of 1.0 would mean that the projected revenues over a certain number of years on a Net Present Value (NPV) basis are equal to the project costs. In other words, under the existing E.B.O. 188 framework, existing customers are not required to subsidize the new system expansion projects.
- A capital pass-through mechanism to incorporate the community expansion projects in rates immediately following their in-service dates.
- Accounting orders to establish a Community Expansion Project Deferral Account and a Community Expansion Contribution Deferral Account. The Community Expansion Project Deferral Account would be used to capture any variances between the forecasted net revenue requirement approved in rates and the actual revenue requirement for all community expansion projects, including timing differences between the in-service date and the inclusion in rates. The Community Expansion Contribution Deferral Account would capture the TES contributions from the new community expansion customers and the ITE contributions from municipalities. The intent of the deferral account is to allocate the TES and ITE revenues to ratepayers to reduce the cross-subsidization of the capital costs.

Under its proposal, Union estimated that it could complete approximately 29 projects to provide natural gas to 18,000 homes and businesses in 34 communities at a total cost of approximately \$135 million. The bill impact for existing ratepayers if all of the 29 community expansion projects proceed ranges from \$1 to \$4 per year for the average residential customer in Union North and Union South. If Union's proposal was approved, the changes to E.B.O. 188 would mean that existing ratepayers would subsidize the costs of expansion for the newly served communities.

Union also proposed to limit the cumulative rate impacts on existing customers to a maximum of \$2 per month (\$24 per year) for all system expansion projects identified in its Opportunity Assessment that it may undertake over the years.

A number of other parties filed evidence in the generic proceeding (EB-2016-0004). Enbridge Gas Distribution Inc. (Enbridge) and EPCOR utilities Inc. (EPCOR) also filed proposals to support community expansion.

The proposal of Enbridge is similar to Union with a few changes. Enbridge has proposed the System Expansion Surcharge (similar to TES of Union) for up to 40 years or until the project achieves a PI of 1.0, unlike Union that proposed the TES for a maximum of 10 years. Enbridge has further proposed to collect the surcharge from all customer classes while Union proposed not to implement a TES for contract customers. The ITE proposal of Enbridge is similar to Union's with the maximum term being 10 years. Union however proposes to match the term of the TES with the ITE contribution.

Enbridge has proposed the creation of an additional portfolio specifically for community expansion projects. The Community Expansion Portfolio would be managed such that the PI is maintained at a level of 0.5 or greater for all projects, and an exemption from E.B.O. 188 that would allow individual community expansion projects to proceed at a PI of less than 0.8. Enbridge has not proposed a minimum threshold PI for individual projects unlike Union that has proposed a minimum PI of 0.4.

Enbridge has proposed that the ITE and surcharge revenues be treated as general revenues, reducing the revenue requirement recovered from all customers in rates on a forecast basis as opposed to Union's proposal of disposing of the actual amounts through a deferral account.

Under the proposed framework, Enbridge indicated that it could complete approximately 39 community expansion projects that would provide natural gas service to approximately 16,000 homes and businesses in the first 10 years at a total capital cost of approximately \$410 million. The estimated existing ratepayer impact associated with the proposal over the first ten years ranges from a rate reduction of \$0.16 to an increase of \$3.98 per year with the cumulative bill impact reaching a maximum of \$10.39 per year in the ninth year for customers¹.

EPCOR which has recently signed franchise agreements with the municipalities of Arran-Elderslie and Kincardine and the Township of Huron-Kinloss also provided evidence in response to Union's proposal in EB-2015-0179.

¹ Enbridge Evidence, Page 32, Para 95

EPCOR supported certain aspects of Union's proposal including that potential new customers, municipalities and existing customers should contribute to system expansion costs. However, EPCOR was of the view that the proponent should also be willing to contribute to project costs and should not be shielded from all financial risks associated with the projects. In addition, EPCOR suggested the establishment of a Province-wide Expansion Reserve Fund administered by the OEB. The funds would capture contribution from existing customers of all gas distribution utilities in Ontario and would be available to incumbents and new entrants seeking to expand services in communities that do not currently have access to natural gas. EPCOR suggested a small volumetric levy on Province-wide sales of natural gas. EPCOR was of the view that unlike incumbents, new entrants did not have an existing customer base to subsidize the expansion costs and if incumbents were allowed to cross-subsidize, it would put new entrants at a disadvantage. An Expansion Reserve Fund would level the playing field according to EPCOR.

A number of other parties that filed evidence either supported the Expansion Reserve Fund concept proposed by EPCOR or discussed this approach in their evidence. Parties such as South Bruce (Municipalities of Kincardine, Arrran-Elderslie and the Township of Huron-Kinloss), Vulnerable Energy Consumers Coalition, Anwaatin, Mocrebec-Eeyoud and NOACC discussed the concept of a universal fund in their evidence. Other parties such as the Canadian Propane Association, Parkland Fuels and Ontario Geothermal Association were opposed to any kind of cross-subsidization to support community expansion.

Position of OEB Staff

OEB staff has presented its arguments based on the Issues List in the proceeding. The submission is however categorised on the basis of the broad topics referred to in the Issues List. The Issues List is attached as Appendix A to the submission.

3. Definition of a Community (Issue #1)

OEB staff is in broad agreement with the definitions proposed by Union and Enbridge. Union has defined a community expansion project as a natural gas system expansion project that will provide first time natural gas system access where a minimum of 50 potential customers in homes and businesses already exist. Enbridge adopted Union's definition.

The only concern of OEB staff with the proposed definition is that it should not be applied to expand into subdivisions where there is proximate access to natural gas. Accordingly, staff proposes to add to the definition, “A natural gas system expansion project that will provide first time natural gas system access to communities where a minimum of 50 potential customers in homes and businesses already exist and which cannot be served from the existing distribution system.”

4. Jurisdiction of the OEB to establish a framework that includes cross-subsidization between natural gas distributors, merits of such an approach and treatment of funds for ratemaking purposes (Issues 2 and 3)

This issue asks whether the OEB has the jurisdiction to establish a framework whereby rates will be charged to the customers of one utility for the benefit of customers of another utility. What follows is OEB staff’s review of the legal framework (the OEB’s powers to set just and reasonable rates and the maxim of “implied exclusion”), a list of examples of existing intra and inter-utility cross subsidies, and OEB staff’s conclusions regarding this issue. In this section OEB staff addresses only the question of can the OEB create an expansion fund, not should the OEB create an expansion fund.

I. Legal Principles

A. *The OEB’s powers to set just and reasonable rates*

Like all tribunals, the OEB only has those powers which are granted to it by statute. The OEB is therefore empowered to create a general expansion fund only if the Act (or its associated regulations) grants it that power. The task before the OEB, therefore, is to interpret the Act and determine whether it gives the OEB the power to approve an “expansion fund”², whereby the customers of one utility will subsidize the expansion activities of another utility.

The key principle in statutory interpretation is known as the “modern principle”. In *Rizzo v. Rizzo Shoes Ltd.*, the Supreme Court of Canada described the modern principle as follows: “Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense

² There are a number of different models that could be used to transfer money from the customers of one utility to fund the expansion activities of a different utility. For the sake of simplicity, however, OEB staff will refer to this practice as an “expansion fund”.

harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”³

If the OEB has the power to create an expansion fund, it arises from its powers to set just and reasonable rates⁴:

36. (1) No gas transmitter, gas distributor or storage company shall sell gas or charge for the transmission, distribution or storage of gas except in accordance with an order of the Board, which is not bound by the terms of any contract. [...]

(2) The Board may make orders approving or fixing just and reasonable rates for the sale of gas by gas transmitters, gas distributors and storage companies, and for the transmission, distribution and storage of gas.

(3) In approving or fixing just and reasonable rates, the Board may adopt any method or technique that it considers appropriate.

In considering its powers the OEB will also be guided by its section 2 objectives with respect to gas, in particular objectives 1, 2 and 3:

2. The Board, in carrying out its responsibilities under this or any other Act in relation to gas, shall be guided by the following objectives:

1. To facilitate competition in the sale of gas to users.

2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service.

3. To facilitate rational expansion of transmission and distribution systems.

The OEB’s powers to set just and reasonable rates under section 36 of the Act are very broad. Setting just and reasonable rates is one of the OEB’s core powers and is at the very heart of the OEB’s jurisdiction. The courts have long recognized that the legislature intended that the OEB have extensive powers to determine what constitutes a just and reasonable rate. In *Advocacy Centre for Tenants-Ontario v. Ontario Energy*

³ [1998] 1 S.C.R. 27

⁴ OEB staff recognizes that the OEB also considers the economics of pipeline projects as part of the “public interest” test in cases where a project requires a leave to construct approval under section 92. Both “public interest” and “just and reasonable” grant broad powers to the OEB. OEB staff does not focus on the public interest test in this submission for two reasons: 1) many of the projects proposed by the utilities will not actually require a leave to construct approval, and therefore the public interest test does not apply; and 2) even when considering project economic in leave to construct cases, the OEB generally just applies the E.B.O. 188 criteria. In other words, the OEB uses a just and reasonable rate setting analysis when considering project economics in a leave to construct.

Board (ACTO), the Divisional Court noted that the OEB is empowered to interpret its rate setting powers in a “fair, large, and liberal manner.”⁵ The Court in ACTO confirmed that the OEB has the jurisdiction to establish a separate rate for low income households, which would involve a cross-subsidy (though not in this case an inter-utility cross subsidy). The Court found that the OEB’s powers to use “any method or technique” indicated that it was not required to use a cost of service approach to rate setting:

The “cost of service” determination will establish a benchmark global amount of revenues resulting from an estimated quantity of units of natural gas or electricity distributed. The Board could use this determination to fix rates on a cost causality basis. This has been the traditional approach.

However, in our view, the Board need not stop there. Rather, the Board in the consideration of its statutory objectives might consider it appropriate to use a specific “method or technique” in the implementation of its basic “cost of service” calculation to arrive at a final fixing of rates that are considered “just and reasonable rates.” This could mean, for example, to further the objective of “energy conservation”, the use of incentive rates or differential pricing dependent upon the quantity of energy consumed. As well, to further the objective of protecting “the interests of consumers” this could mean taking into account income levels in pricing to achieve the delivery of affordable energy to low income consumers on the basis that this meets the objective of protecting “the interests of consumers with respect to prices.”⁶

The Ontario Court of Appeal discussed the extent of the OEB’s rate setting powers in *Toronto Hydro-Electric System Limited v. Ontario Energy Board* (Toronto Hydro). The Court stated: “The case law suggests that the OEB’s power in respect of setting rates is to be interpreted broadly and extends well beyond a strict construction of the task.” The Court further noted:

Courts should hesitate to analyze the decisions of specialized tribunals through the lens of jurisdiction unless it is clear that the tribunal exceeded its statutory powers by entering into an area of inquiry outside of what the legislature intended. If the decision of a specialized tribunal aims to achieve a valid statutory purpose, and the enabling statute includes a broad grant of

⁵ *Advocacy Centre for Tenants-Ontario v. Ontario Energy Board*, [2008] O.J. 1970 (Ont. Div. Ct.), para 56.

⁶ ACTO, paras. 54-55.

open-ended power to achieve that purpose, the matter should be considered within the jurisdiction of the tribunal.⁷

The OEB's powers to set just and reasonable rates are not limitless, however. In *Toronto Hydro* the Court cautioned: "In contrast, where a tribunal is pursuing an illegitimate objective, or is engaging in actions that clearly defy the limits of its statutory authority, then a reviewing court may properly declare its decisions to be ultra vires [i.e. beyond the Board's jurisdiction]."⁸

In *ACTO* the Court observed:

Nor is it to suggest that as a matter of public policy, objectives of distributive justice or conservation in respect of energy consumption are best achieved by rate setting as compared to, for instance, tax expenditures or social assistance devised and implemented by the Legislature through mechanisms independent of the operation of the *Act*. It is noted that the Minister is given the authority in s. 27 of the *Act* to issue policy statements as to matters that the Board must pursue; however, the Minister has not issued any policy statement directing the Board to base rates on considerations of the ability to pay. Moreover, the power granted to a regulatory authority "must be exercised reasonably and according to the law, and cannot be exercised for a collateral object or an extraneous and irrelevant purpose, however commendable." *Re Multi Malls Inc. et al. and Minister of Transportation and Communications et al* (1977), [1976 CanLII 623 \(ON CA\)](#), 14 O.R. (2d) 49 at 55 (C.A.). As we have said, cost of service is the starting point building block in rate setting, to meet the fundamental concern of balancing the interests of all consumers with the interests of the natural monopoly utility.⁹

The Court further stated that the OEB is primarily an economic regulator: "The Board's mandate through economic regulation is directed primarily at avoiding the potential problem of excessive prices resulting because of a monopoly distributor of an essential service. ... The Board is an economic regulator, rather than a formulator of social policy."¹⁰

The jurisprudence therefore suggests that, although the OEB has broad discretion in setting rates and need not slavishly adhere to a strict cost of service model, neither should it be considered a social agency. The focus of public utilities regulation has

⁷ *Toronto Hydro*, 2010 ONCA 284, para 24.

⁸ *Toronto Hydro*, para. 24.

⁹ *ACTO*, para. 58.

¹⁰ *ACTO*, para. 39.

been the balancing of interests between the rate payer and the monopoly service provider (i.e. the regulatory compact), and that is where the OEB's expertise lies. Although there is a social policy element to some of the OEB's undertakings, caution should be exercised in undertaking any significant new programs that are not based on the principles of economic regulation.

B. The maxim of "Implied Exclusion"

The legal maxim (or guiding principle) of "implied exclusion" is described in *Sullivan on the Construction of Statutes* as follows:

An implied exclusion argument lies whenever there is reason to believe that if the legislature had meant to include a particular thing within its legislation, it would have referred to that thing expressly. Because of this expectation, the legislature's failure to mention the thing becomes grounds for inferring that it was deliberately excluded. Although there is no express exclusion, exclusion is implied. The force of the implication depends on the strength and legitimacy of the expectation of express reference. The better the reason for anticipating express reference to a thing, the more telling the silence of the legislature.¹¹

Implied exclusion is relevant to the issue before the OEB because the OEB already administers two programs that are broadly similar to a cross-utility expansion fund: rural and remote rate assistance and the Ontario Electricity Support Program. However, these are programs which the OEB is specifically mandated by legislation to facilitate – in particular through sections 79 and 79.2 of the Act. As these programs are identified by statute, there is clearly no jurisdictional impediment and these are not useful precedents in support of an expansion fund that is not mentioned in any legislation.

However, the fact that the legislature enacted specific legislation to grant the OEB the power to administer two programs that are similar to an expansion fund, and yet has not enacted legislation that expressly permits an expansion fund, suggests that the OEB may not have the general power to enact such a program through its ordinary just and reasonable rates powers. Put another way, had the government intended for the OEB to have the power to create an expansion fund that is similar to rural and remote rate assistance or the OESP, it would have made specific legislative provisions for this (just as it did for those two programs). If the OEB's powers to set just and reasonable rates already give it this power, then there might have been no need for the government to enact the sections authorizing rural and remote rate assistance and the OESP.

¹¹ Ruth Sullivan, *Sullivan on the Construction of Statutes*, Sixth Edition, 2014, p. 248.

It is important to recognize, however, that the maxim of implied exclusion should serve only as a tool in statutory interpretation, and not a hard and fast “rule”. In *Dorval v. Dorval*, the Saskatchewan Court of Appeal summarized implied exclusion as follows:

[Implied exclusion] is only an aid to statutory construction. As Laskin C.J. noted in *Jones v. New Brunswick (Attorney General)*, “This maxim provides at the most merely a guide to interpretation; it does not pre-ordain conclusions.” And its application calls for a considerable measure of caution lest too much be made of it...

First, much depends on context, including the particular subject matter. Second, express reference to a matter may have been unnecessary and been made only out of abundant caution. Third, the lack of express reference may have been the product of inadvertence. Fourth, the express and the tacit, incongruous as they may be, must still be such as to make it clear they were not intended to co-exist. And, finally, the indiscriminate application of [implied exclusion] to the particular subject-matter may lead to inconsistency or injustice.¹²

Implied exclusion is a guiding principle that should be used by the OEB to interpret its legal powers. It is not, however, the only tool that the OEB should use in assessing the extent of its powers.

II. Existing cross subsidies that are authorized by the OEB

Although economic regulation generally aims to avoid cross subsidies¹³, the OEB clearly has jurisdiction to authorize cross subsidies under some circumstances. As several parties in this proceeding have observed, subsidies of one form or another are not uncommon within the existing framework. Most of these cross-subsidies are within a utility – for example postage stamp rates and revenue to cost ratios that are above or below 1.0. Postage stamp rates were not created out of a desire by the OEB to create cross subsidies, but instead because it simply would not be practical to charge every single ratepayer a different rate based on their precise cost and load profile.

Regardless, there are a number of existing intra-utility cross subsidies, and no party has suggested the OEB lacks the jurisdiction to authorize these subsidies through its just and reasonable rates powers. Clearly the OEB’s just and reasonable rate powers allow for some level of cross subsidy.

¹² [2006] S.J. No. 94, paras. 13-14 (Sask. C.A.)

¹³ Evidence of Dr. Yatchew, Transcript volume 7, pp. 83-84, “Ratemaking Principles and the use of Subsidies in Natural Gas Community Expansion Programs” by Charles Budd, filed by the Canadian Propane Association, pp. 3-5.

There are also some examples of inter-utility cross subsidies. Rural and remote rate assistance and the OESP, which are specifically contemplated in the Act, are discussed above. The Ontario Uniform Transmission Rate (“UTR”) is an example of what is at least partially an inter-utility cross subsidy that is not mandated by statute. The OEB’s powers with respect to electricity transmission rates are the same as its powers for electricity distribution and gas distribution and transmission. For transmission, however, the OEB has created a single blended volumetric network rate¹⁴ that is effectively paid by all consumers.¹⁵ There are five electricity transmitters in the Ontario electricity transmission rate pool, and the OEB sets all of their revenue requirements separately. These five revenue requirements are then added together to form a combined revenue requirement which in turn produces a single uniform transmission rate that is ultimately charged on a volumetric basis to all electricity consumers. Consumers that are served primarily by Hydro One, therefore, pay through their rates a portion of the costs of Great Lakes Power Ltd., and vice-versa. This is arguably a cross subsidy. However, the transmission grid is interconnected, and power flows freely between all five systems. The power consumed by customers attached on Hydro One’s network may have travelled on the systems of the other transmitters. Customers served by GLPL or Five Nations certainly used Hydro One’s network, as both of those utilities are connected only through Hydro One. So although there is some measure of cross subsidy between the five transmitters, end use customers benefit at least in some measure from all of the transmitters regardless of which transmitter they are actually connected to.

III. Conclusion

It is OEB staff’s conclusion that the OEB likely does have the jurisdiction to create some form of expansion fund that creates subsidies between utilities and their ratepayers. The OEB’s objectives for natural gas include the facilitation of competition in the sale of gas to users, and the facilitation of the rational expansion of transmission and distribution systems. As per the Toronto Hydro decision, rational gas expansion is a valid statutory purpose, and the OEB has been given a broad grant of power through its just and reasonable rates powers to promote this goal. If the OEB determines that an

¹⁴ There are actually three separate rates: the network rate, the line connection rate and the transformation connection rate. The network rate is paid by all electricity consumers and is effectively a single volumetric rate. About half of the combined transmission revenue requirement is recovered through the network rate. The line connection rate and the transformation connection rate are rates paid only by customers that impose additional costs on the system, through their use of a line connection or transformation services. See the Uniform Transmission Rate Decision and Rate Order EB-2015-0311, issued January 14, 2016 and corrected on January 15, 2016.

¹⁵ Distributors pay a wholesale network transmission rate, which they recover from their customers as a retail transmission rate. The end result is that end use customers are paying the network transmission rate.

expansion fund is a reasonable way to promote rational expansion, then section 36 (when combined with the OEB's objectives) appears to provide that power.

Some cross subsidies are already authorized through rates, both intra utility and at least to some extent inter-utility. It is doubtful that a bill paying consumer cares whether a cross subsidy is going to another customer of their utility or a different utility (though of course the total cost of any subsidy, or the fact that there is a subsidy at all, may well be of concern to consumers).

OEB staff cautions, however, that there are likely jurisdictional limits on how far such a program could go. The OEB's objectives also include the protection of the interests of consumers with respect to prices. The expansion funds that have been proposed would involve the transfer of many millions of dollars from existing customers to new customers, with little or no benefit accruing to the existing customers. Presumably there is some point where an explicit transfer of wealth of this sort ceases to be just and reasonable for existing customers. The fact that the legislature passed legislation giving the OEB the power to charge rates for rural and remote rate assistance and the Ontario Energy Savings Program further suggests that the OEB does not have carte blanche to create these types of programs in the absence of specific empowering legislation. The OEB is primarily an economic regulator, and a program that does not follow the costs follow benefits principle appears to be more in the nature of a social program.

Similarly, in order to justify a subsidy, the OEB must be satisfied that an expansion fund is in fact a "rational" means of expanding gas service and facilitating competition. The OEB will need to consider the expert economic evidence that has been filed in this proceeding, and consider the alternate proposals that do not require a cross-utility subsidy to make this determination.

In Procedural Order No. 3, the OEB asked parties to consider what changes to the OEB's jurisdiction might be helpful to encourage natural gas expansion. As discussed in further detail below, OEB staff believes that the existing legislative framework provides the OEB with the tools it needs to encourage natural gas expansion, and that changes to the Act do not appear to be required. However, if the OEB were inclined to consider an aggressive expansion fund, then changes to the Act that specifically authorized that activity would be welcome.

Merits of Approach and Treatment of Contributions for Ratemaking Purposes

Whereas Issue #2 asks can the OEB create an expansion fund, Issue #3 asks should the OEB create an expansion fund. As discussed in further detail below, it is OEB staff's view that cross subsidies (whether intra-utility or inter-utility) are not necessary under OEB staff's proposed approach. The issue of establishing an expansion fund therefore does not arise.

If the OEB were to create such a fund, OEB staff provides the following suggestions:

The OEB would have to set clear expectations on the purpose of the fund, how the fund is funded, who is eligible to receive the funds, and under what terms. OEB staff suggests that the fund could be funded through a volumetric distribution rate charged to all general service customers. This would require an amendment to the rate orders of all existing distributors. Money collected through the rider would be paid into the fund. A fund administrator would have to be created, likely within the OEB itself. The fund administrator would be in charge of collecting money from distributors, holding the money, and then distributing it to utilities (or projects) that meet the OEB's criteria.

OEB staff observes that this would be a significant administrative undertaking with additional financial costs.

For ratemaking purposes OEB staff suggests that if the OEB nevertheless decides to establish an expansion fund that requires contribution from existing ratepayers, then any funds received should be treated as a contribution in aid of capital.

5. Changes to Economic Assessment and the OEB's E.B.O. 188 Guidelines, Surcharges for New Communities and other Ratemaking Approaches (Issues 4 to 7)

One of the most important question that needs to be answered in this proceeding is whether the OEB should consider changes to the E.B.O. 188 Guidelines, specifically changes to the portfolio PI and individual PIs. The current guidelines have served the utilities and ratepayers effectively for the last number of years ensuring that utilities can expand into new subdivisions and communities with minimal or no rate impact on existing customers.

However, with respect to community expansion projects, Enbridge and Union have proposed lower thresholds for the economic tests. Union has proposed a minimum

threshold of 0.4 for individual PIs while Enbridge has proposed a community expansion portfolio PI of 0.5 or greater, with no minimum PI threshold for individual projects. The reason is that all the projects proposed by Union and Enbridge are uneconomic on their own under the existing E.B.O. 188 guidelines and the utilities believe that a contribution from existing customers would make these projects feasible. This is in addition to the charges that Enbridge and Union intend to recover through the TES and ITE contributions. More specifically, existing customers of Union and Enbridge are being asked to contribute more than half of the capital costs to expand into the new communities.

Union and Enbridge emphasized that their proposals were in response to the letter of the OEB inviting proposals to expand into new communities. The utilities indicated that the aim of their proposals were to strike a balance between the new expansion customers and existing customers with a relatively small impact on existing customers. Union and Enbridge have both proposed a ceiling on the rate impact for existing customers. As noted earlier, Union proposed to limit the rate impact to a maximum of \$2 per month for all community expansion projects that they may undertake. Similarly, Enbridge proposed to limit the rate impact to a maximum of \$1 per month. The utilities have used, as a guide, the threshold determined by the OEB in the determination of the funding required for Demand Side Management (DSM) programs. In the OEB's DSM Decision and Order¹⁶, the OEB noted that \$2 per month bill impact was established to ensure that impacts to customers are maintained at a reasonable level, balancing the availability of energy efficiency and conservation opportunities with additional costs to customers.

The utilities intent to link the rate impact of community expansion to DSM was explored at the oral hearing. The School Energy Coalition (SEC) noted that in the case of DSM, customers who are paying the additional costs to fund the programs may also be able to benefit from those programs¹⁷. However, in the case of community expansion funding, existing customers do not receive any direct benefits with the exception of a marginal decline in overall administrative costs. Union has attempted to quantify the benefits for existing customers. It is estimated to be \$0.50 per year for the 29 potential community expansion projects¹⁸. The reduction of \$0.50 per year is related to a decrease in administrative and general costs on a per customer basis.

OEB staff agrees with the position of SEC and notes that the benefit of DSM is potentially available to all general service customers of that utility. The threshold

¹⁶ EB-2015-0029 and EB-2015-0049, Decision and Order, January 20, 2016, Page 59

established for DSM therefore does not seem appropriate for community expansion projects.

Both the costs and the benefits of Union and Enbridge's proposed expansion programs are significant. Essentially, all of the benefits of expansion will go to newly connected customers. Union and Enbridge have provided a Stage 2 benefit analysis. All customers in the new communities that convert to natural gas from oil, wood, electric or propane would realise substantial savings as a result of converting to natural gas. Union has estimated the average annual savings to be over \$1,600¹⁹ while Enbridge has estimated the annual savings to be around \$1,700. With the inclusion of the expansion surcharge, the average annual savings are approximately \$1,100²⁰ for both utilities' customers. In other words, although the new customers will incur some conversion costs, they will achieve significant savings as soon as they convert to natural gas.

A Stage 2 analysis provides the Net Present Value (NPV) of the savings achieved over a period of 40 years. The net savings account for both the conversion costs (i.e. costs associated with furnace conversions to allow for natural gas use) and contribution through the expansion surcharge. The resulting NPV of customers' net fuel savings from the Stage 2 assessment for all 39 projects of Enbridge is approximately \$357 million. This means that the new community expansion customers of Enbridge will save approximately \$357 million²¹ over a 40 year period after accounting for the annual charges in rates and the cost to convert their equipment. Similarly, the new community customers of Union would save \$313 million²² over the 40 years with respect to the 29 community expansion projects.

The benefits to new customers for conversion to natural gas are therefore significant – in total over \$650 million (net present value) over 40 years for a relatively small number of customers (approximately 18,000 for Union and 16,000 for Enbridge in the first 10 years).

The benefits for existing customers seem to be minimal. As noted earlier, the benefit to existing customers of Union is estimated to be \$0.50 per year for the 29 potential community expansion projects²³. However, the costs to existing customers are not immaterial. For Enbridge, the subsidy from existing customers to expansion customers is approximately \$123 million on a net present value basis.²⁴ The comparable number

¹⁹ Union pre-filed evidence in EB-2015-0179, Exhibit A, Tab 1, Table 1, Page 18

²⁰ Enbridge pre-filed evidence, EB-2016-0004, Table 1, Page 15

Union pre-filed evidence in EB-2015-0179, Exhibit A, Tab 1, Page 21

²¹ Enbridge pre-filed evidence, Table 10, Page 33

²² Union pre-filed evidence in EB-2015-0179, Exhibit A, Tab 1, Page 39

²³ Response to Undertaking J4.6

²⁴ Enbridge pre-filed evidence, Page 33.

for Union is approximately \$68 million.²⁵ Although the bill impact on individual existing customers is small, this amounts to a \$191 million payment from existing customers to expansion customers, with little or no benefit to existing customers.

The benefits to new customers would be significant even with no subsidy at all from existing customers. For Enbridge, on a net present value basis the benefits to new customers are \$357 million and the proposed subsidy is \$123 million. Therefore, even with no subsidy at all, expansion customers would receive a benefit of approximately \$234 million. For Union, the benefits to expansion customers without a subsidy are approximately \$245 million (\$313 million in benefits minus the \$68 million subsidy). OEB staff accepts that these numbers are only forecasts and are subject to some level of change. Directionally, however, it is clear that expansion makes significant economic sense for the new communities even with no subsidy.

Although there may be a sound public policy rationale for expanding natural gas service to new communities, this objective should be achievable with minimal subsidies from existing customers or if possible with no subsidies, as the benefits to new communities are significant even without a subsidy. However, should the OEB decide that some level of subsidy from existing customers is appropriate, OEB staff suggests that the cross-subsidy should be minimal considering the significant benefits of converting to natural gas for new customers. OEB staff submits that the rate impact should be minimal and under \$1 per month for a typical residential customer. OEB staff submits that the limit should be low enough to closely follow the principle of cost causality and alleviate the need to establish an expansion fund.

Although many communities would benefit substantially from natural gas expansion (even if they paid the full cost), for some reason expansion is not happening under the current framework. Clearly there are barriers to gas expansion, and OEB staff is hopeful that this proceeding can be used to reduce these barriers.

OEB staff is of the opinion that there are other approaches to improve financial feasibility of these projects. In addition, OEB staff is of the opinion that projects that are highly uneconomic should not be pursued by the utilities. Projects that have very low PIs (0.1 or below) will most likely never be able to contribute to the profitability of the company and would be a permanent strain on existing ratepayers if the new expansion customers are not required to pay for majority of the costs. It is important to note that the Minister's letter did not indicate expansion at all costs but rather suggested a rational expansion of natural gas.

²⁵ Union response to OEB staff IR #1.

Furthermore, Ontario is about to embark on a cap and trade program that will impose a price on carbon and adopt measures at reducing the total carbon footprint in the province. In the Ontario Government's five year Climate Change Action Plan released on June 8, 2016, the Province will offer incentives to move people away from energy intensive heat and cooling sources like old gas boilers, inefficient electric baseboard heaters and oil furnaces to technologies like solar, air-source heat pumps, geothermal systems, vehicle-to-grid energy systems, and energy storage systems²⁶. Communities with low PIs could take advantage of such programs and pursue alternative technologies that provide similar benefits as natural gas.

Proposed Framework

OEB staff proposes the following approach as an alternative framework to support community expansion:

- To implement the Expansion Surcharge for a maximum period of 40 years or until the project reaches a PI of 1.0.
- A contribution from municipalities equivalent to the incremental property taxes on the expansion infrastructure for a maximum term of 20 years or matching the term of the expansion surcharge.
- All community expansion projects should be included in the Rolling Project Portfolio as per the current E.B.O. 188 Guidelines. The minimum RPP would remain at 1.0 but the individual threshold for community expansion projects would be reduced to 0.7 (inclusive of expansion surcharge and ITE contribution) from the current 0.8. OEB staff also proposes that the Investment Portfolio guideline be reduced to 1.0 from the current 1.1.
- A capital pass-through mechanism to incorporate the community expansion projects in rates immediately following their in-service dates.
- Accounting orders to establish a Community Expansion Project Deferral Account and a Community Expansion Contribution Deferral Account. Staff prefers that the amounts are cleared through a deferral account as compared to Enbridge's proposal of including it in rates on a forecast basis. The deferral account would capture actual revenues and costs which would reduce the forecasting risk for both, ratepayers and the utility.

²⁶ Ontario's Five-Year Climate Change Action Plan 2016-2020, Page 16

Expansion Surcharge

OEB staff has proposed that the expansion surcharge be extended up to 40 years which is similar to Enbridge's proposal. OEB staff is of the opinion that customers receiving the cost savings should make the appropriate contribution. Union and Enbridge have suggested a surcharge rate of \$0.23 per m³ which translates to an annual amount of approximately \$500. Customers in the new communities will realize significant cost savings even after incurring the expansion surcharges. Enbridge and Union have estimated the average annual savings after the surcharge at approximately \$1,100²⁷. These savings will be realized from day one for the new customers; therefore there is no reason why a new customer would not be willing to incur the surcharge for an extended period, considering that they will realize net savings year after year. Union and Enbridge have estimated the average pay back period to be about 4 years after taking into account conversion costs and the expansion surcharge²⁸.

Union in response to an interrogatory²⁹ noted that a 40-year term was too long and would amount to higher rates on a long term basis as compared to other neighbouring communities with natural gas service. Union also expressed concern that an extended surcharge period had not been tested with customers in the potential expansion communities and therefore its impact on customer forecasts was not known. OEB staff notes that Enbridge believes that a 40-year term is appropriate and it is expected that Enbridge must have reached this conclusion after a careful analysis. Most of the communities that do not currently have natural gas service acknowledge that the reason they do not have service is because it costs more to serve them. Anwaatin in its evidence noted that customers in northern Ontario would gladly pay double or three times the cost of heating a home using natural gas in Southern Ontario as compared to paying \$1,000 or \$1,500 per month that they have to pay for other heating energy options³⁰. Moreover, the survey findings presented by Union and Enbridge indicate that potential customers in the un-served communities acknowledge the cost benefits of natural gas and a high proportion of respondents expressed their willingness to convert to natural gas after being informed of the conversion costs and temporary surcharge³¹. Accordingly, OEB staff has no major concerns that potential customers in the new

²⁷ Enbridge pre-filed evidence, EB-2016-0004, Table 1, Page 15

Union pre-filed evidence in EB-2015-0179, Exhibit A, Tab 1, Page 21

²⁸ EB-2016-0004, Enbridge pre-filed evidence, Table 1, Page 15 and Union pre-filed evidence EB-2015-0179, Exhibit A, Tab 1, Page 20

²⁹ Union response to FRPO IR#8

³⁰ Pre-filed evidence of Anwaatin Inc., Page 7

³¹ EB-2015-0179, Exhibit B.Staff.11, Attachment 1-3, Page 9 and Enbridge response to SEC IR#6, Ipsos-Reid Survey Findings, Executive Summary

communities would not accept a surcharge term of 40 years considering that they are convinced of the savings potential of natural gas.

Treatment of Surcharge and ITE Contributions

Union and Enbridge have proposed that the expansion surcharge and ITE contributions should be treated as revenue as opposed to a capital contribution. Interrogatory responses³² and evidence at the hearing revealed that ratepayers receive greater benefits in terms of a lower revenue requirement when the TES and ITE contributions are treated as revenue. OEB staff supports the position of Union and Enbridge.

Enbridge has proposed that its expansion surcharge be applicable to all expansion customers while Union has limited it to general service customers. In its evidence, Union indicated that it has identified five potential contract customers in the 29 communities and it informally consulted with the largest contract customer who indicated that it would not attach to the system if an expansion surcharge was imposed. Union is of the view that it could capture the additional costs by requiring a capital contribution, extending the term of the contract or increasing the minimum annual volume³³. Union also indicated at the hearing that contract customers would be responsible for the incremental costs to serve them and they would need to achieve the same PI as the rest of the community. In other words, contract customers would not be included in the overall analysis but would be contributing as they would be required to achieve the same PI as the community.

OEB staff has no specific position on the issue and believe that the utilities should be given the required flexibility to accommodate contract customers as long as new community expansion customers are not required to subsidize the cost to serve contract customers.

Contribution from Municipalities

Union and Enbridge suggested a contribution from the municipalities in lieu of taxes for the first 10 years. OEB staff has proposed that the contribution be extended to a maximum of 20 years or match the term of the expansion surcharge, whichever is less. A number of municipalities that do not currently have natural gas service provided evidence and letters of comments in the proceeding supporting the proposals of Union and Enbridge. They have cited several benefits of natural gas service including lower heating costs for homes, businesses, schools, hospitals and municipalities and the ability to attract residents and businesses. The municipalities of South Bruce in their

³² EB-2015-0179, Response to LPMA IR#1 and Exhibit S3.EGDI.SEC.20

³³ EB-2015-0179, Response to LPMA IR#12 and Enbridge IR #6

testimony at the oral hearing noted that not having access to natural gas has put their municipalities at a disadvantage for both the retention of existing businesses and the attraction of new business. In fact, the mayors indicated at the hearing that without access to natural gas in the near future, some businesses may decide to leave the area³⁴.

The municipalities of South Bruce completed a business case study that indicated potential savings of \$27 million per year for the communities if there is access to natural gas³⁵. The municipality of Kincardine itself would see estimated annual savings of around \$100,000 for its own buildings.

It is clear that the municipalities would realise significant savings by switching to natural gas. In addition, they would be able to get higher tax revenues as a result of attracting new businesses and residential buildings. OEB staff sees no reason why the municipalities should not make a higher contribution in order to realize these benefits. In fact, the municipalities have themselves noted these benefits in their evidence and letters of comments. Furthermore, the additional revenues from the utilities' infrastructure taxes are not being realized today and the municipalities would not be foregoing amounts that are in their current budget. OEB staff is confident that the municipalities would not be adversely affected if they were to forego the incremental taxes for an additional 10 years. For example, the municipality of Kincardine would save \$100,000 as a result of access to natural gas which translates to \$2.0 million for the 20 year period. In addition, the municipalities would further increase tax revenues as a result of attracting new homeowners and businesses. Accordingly, a 20 year maximum term for the ITE contribution is appropriate according to OEB staff.

Changes to E.B.O 188

Union and Enbridge have proposed significant reductions to the current minimum threshold PI. Union has suggested a reduction to 0.4 while Enbridge has not suggested any minimum from the current threshold of 0.8 for individual projects. This would result in significant cross subsidies. As noted earlier, existing customers of Union and Enbridge will be required to make a significant contribution to support the community expansion projects proposed by the two utilities. OEB staff submits that there is no justification for existing customers to bear a majority of the costs, when the analysis clearly indicates that savings from conversion to natural gas far outweigh the costs to connect most of the community expansion customers.

³⁴ EB-2016-0004 Transcript, Volume 3, May 9, 2016, Pages 144-145

³⁵ EB-2016-0004 Transcript, Volume 3, May 9, 2016, Page 146

OEB staff therefore proposes that the OEB should only lower the individual project PI from 0.8 to 0.7. However, the PI of 0.7 would be inclusive of the expansion surcharge and the ITE contribution. Further, community expansion projects should not be exempt from the current Rolling Project Portfolio guideline which is currently set at 1.0. However, OEB staff proposes to lower the Investment Portfolio guideline to a minimum target PI of 1.0 as opposed to the current 1.1. OEB staff is of the opinion that standardizing the Rolling Project Portfolio and the Investment Portfolio guidelines seems appropriate. The OEB in E.B.O. 188 determined that an Investment Portfolio target of 1.1 was appropriate given the forecast risks inherent in the investment portfolio analysis and would more likely achieve the desired results of no undue rate impacts³⁶. Enbridge in response to an interrogatory noted that from 2001 to 2015, the Company's Investment Portfolio ranged from a low of 0.95 to a high of 1.80, with a cumulative net present value amounting to over \$650 million over the 15-year period³⁷. In other words, the customers that were added to the distribution system subsidized the existing customers. The same applies to Union. Union reported an average Investment Portfolio of 1.14³⁸ over the past three years generating an excess net present value over the target of \$14.6 million³⁹. Accordingly, OEB staff does not see any reason to have a different target for the Investment Portfolio versus the RPP and is of the opinion that both targets should be set to a minimum of 1.0.

The approach recommended by OEB staff ensures that there is no overall subsidization from existing to new customers. Consequently, the question of establishing an expansion reserve fund or Universal Service Fund that was proposed by a number of parties does not arise. The proposal of OEB staff would also level the playing field for new entrants and other alternate energy service providers.

In an undertaking response⁴⁰, Union noted that if the expansion surcharge was implemented for a 40 year period or until the project reaches a PI of 1.0, the cumulative PI of the 29 projects is 0.9 and ten projects reach a PI of 1.0 between a nine and twenty five year period. However, the projects proposed by Enbridge are not as economic as Union's. There is only one project (Fenelon Falls and Bobcaygeon) of Enbridge that achieves a PI of 0.7 and therefore only one project of Enbridge would qualify under OEB staff's proposed approach. However, Enbridge has not completed a detailed cost analysis of the other projects and it is possible that a few additional projects could qualify considering the contingency built into initial estimates.

³⁶ Final Report of the Board, E.B.O. 188, EB-2015-0179, Exhibit A, Tab 1, Appendix C

³⁷ Enbridge response to Energy Probe IR# 2

³⁸ EB-2016-0004 Transcript, Volume 5, May 11, 2016, Page 140

³⁹ Union pre-filed evidence in EB-2016-0004, Exhibit A, Tab 1, Page 8

⁴⁰ Response to Undertaking J5.6

Union in its evidence has noted that if the OEB does not accept that cross-subsidization from existing to new customers is in the public interest then it should consider lowering individual project threshold PIs to below 0.8. The rationale for this is that Union's recent Rolling Project Portfolio history has resulted in a positive NPV averaging \$14.6 million per year over the past three years and a similar pattern has existed for an extended number of years⁴¹. Similarly, Enbridge has noted that its past three year average NPV is approximately \$40 million positive⁴². In other words, both utilities could use the excess positive NPV related to other system expansion projects to complete a small number of community expansion projects on an annual basis while still maintaining the Rolling Project Portfolio target of 1.0. Lowering the individual threshold PI to 0.7 will allow them to pursue a larger number of community expansion projects.

Under the OEB staff's proposed approach to facilitate community expansion, it is expected that Union could pursue between 15 to 20 community expansion projects while Enbridge could complete two to three projects. OEB staff requests Union and Enbridge to provide updated estimates based on staff's proposed approach.

As noted earlier, Union has indicated that the cumulative PI of its proposed 29 community expansion projects is 0.9 if the expansion surcharge is extended to a maximum of 40 years. In the event that the OEB adopts a different framework wherein the OEB creates a separate portfolio for community expansion projects and establishes a minimum RPP target of 0.9, OEB staff submits that it would be helpful if Union and Enbridge would inform the OEB of the number of projects that could be completed under such a scenario and the total subsidy that existing customers would have to pay over the 40 year period. The remaining parameters would remain the same as staff has proposed (individual PI threshold of 0.7, surcharge of 40 years maximum and ITE contribution of 20 years maximum).

Expansion Using Liquefied Natural Gas

In its application, Enbridge has identified a subset of communities that it intends to serve using Liquefied Natural Gas (LNG). These communities are located at a considerable distance from the nearest gas distribution system and can be more economically served using LNG. Of the 39 communities that Enbridge has proposed to serve in its application, 19 communities are likely to be served using LNG. Enbridge has proposed to recover the cost of LNG from all customers through the company's gas supply plan. In other words, the incremental costs of the LNG which includes costs for decanting, odorization and injecting costs would be recovered from all ratepayers.

⁴¹ Union pre-filed evidence in EB-2016-0004, Exhibit A, Tab 1, Page 8

⁴² Enbridge response to CCC IR#16, EB-2016-0004

OEB staff expects that none of the LNG projects would qualify under staff's proposed approach. However, in the event that a different framework is established, OEB staff submits that requiring all customers to pay for the cost of LNG supply would not be fair to existing ratepayers as they are not causing the incremental costs. Communities that are served using LNG should pay the costs to serve them and there is no reason why new customers should not pay the actual cost of the commodity. This is further supported by the fact that Enbridge has confirmed that it can isolate and determine the incremental cost of LNG for each of the communities.

Costs Included in Economic Assessment

In Issue 4(b), the OEB has posed the question as to what costs should be included in the economic assessment. OEB staff submits that any leave to construct for community expansion projects should provide separate costs for the transmission and distribution segment of the project as well as any upstream reinforcement costs. Transmission in this case is defined as the pipeline that provides the link between the interconnect of the existing distribution system and the city gate or the point at which the distribution network begins in the new community. This will allow the OEB to better evaluate alternatives including LNG or compressed natural gas.

The second issue is whether advancement charges should be included in the economic assessment. Union has proposed that costs for upstream distribution system reinforcement be included in the economic assessment for any new attachments or load additions. The request stems from an OEB Decision in 1995⁴³ that directed Union to file in future applications, an estimate of the costs of any reinforcement of existing lines that may be necessary as a result of the specific application, and an assessment of the impact of the costs of reinforcement on the economics of the project.

Union has used this approach once in the project to serve Port Elgin, Southhampton and Wiarton in 1997. The economic feasibility analysis of the project included a cost of \$6.045 million as a component of the capital costs of \$22.1 million. The resulting up-front Aid to Construction was estimated at \$3.8 million in order to increase the project PI to 0.8. The \$6.045 million cost was a result of changes in timing for a total of seven expected reinforcement projects on the Owen Sound Line. An amount of \$2.0 million representing the reinforcement costs was imbedded in the total cost of the project. The OEB approved the Port Elgin project which included the advancement charges⁴⁴.

In this application, Union has proposed that advancement charges be restricted to situations where material new attachments would result in a need to accelerate future

⁴³ Wingham Expansion Project, E.B.L.O. 253

⁴⁴ Response to Undertaking J5.7

reinforcement to within three years following the year the attachment is put into service. Union has used a three year period as it is of the opinion that the planning and execution cycle for a major reinforcement project can extend that long, and Union does not want to be in a position where a small customer would be unable to connect because the system capacity has been fully exhausted. In addition to the above condition, Union has proposed that the need for upstream reinforcement advancement charges be restricted to economic assessments where the requirement of a new attachment or load addition is 200 m³/hour or higher.

The issue of advancement charges was raised by EPCOR at the oral hearing. EPCOR has signed a franchise agreement with the municipalities of South Bruce to provide gas distribution services in Kincardine and surrounding areas. In order to serve the communities, EPCOR would require gas supply from Union's distribution system. Union has agreed to provide the required quantities to EPCOR but requires EPCOR to pay an advancement charge as the significant quantities required for EPCOR would result in Union having to reinforce the system much earlier than planned (within the three year proposed window). Union in its application (EB-2015-0179) also included Kincardine as one of the potential 29 community expansion projects. At the hearing, Union confirmed that it had included advancement costs in its own cost estimates for serving Kincardine. This is because if the project is not allocated the reinforcement costs than the cost of reinforcement would have to be borne by all ratepayers.

OEB staff is in broad agreement with Union's proposal and agrees that if a specific project causes or brings forward additional reinforcement of an upstream pipeline system, the project should be responsible for the reinforcement costs. However, it is not clear if there is any remedial measure if the reinforcement does not occur within the three year window. It is possible that reinforcement is not required as the expected additional volumes do not materialize. Furthermore, considering the Ontario Government's implementation of a cap and trade program and initiatives to reduce Greenhouse Gas (GHG) emissions, natural gas flows may not increase as expected or even decrease to meet the GHG reduction targets of the Province. In such a case, there could be enough capacity such that no reinforcement is required. Accordingly, OEB staff submits that if an advancement charge is applied and the reinforcement does not materialize within the three year window, the amounts collected should be refunded to the party/parties that paid the advancement charge.

Customer Forecast and Revenue Time Period

The customer forecast time horizon is set at a maximum of 10 years in the EBO 188 Guidelines. Union has suggested extending the maximum customer forecast period to

25 years. The reason is that a typical heating equipment has a life of up to 25 years and it is possible that some customers convert to natural gas when their heating system requires replacement after the initial 10 year period.

Similarly, Union has suggested that revenues for small (general service) commercial/industrial load additions should not be limited to a 20 year period. Union agrees that for process loads, a longer time period may be a concern. However, for heating loads, a longer term is appropriate as the building is not likely to be demolished if the incumbent business is sold or closed. The building will continue to be heated using natural gas. Accordingly, Union has proposed that a maximum 40 year term should be used for heat and water heating load for commercial and industrial customers. In other words, the revenues considered in the economic feasibility analysis for a new business customer attachment should be 20 years for process loads and up to 40 years for heating.

Enbridge is in agreement with Union's proposed changes. OEB staff have reviewed Union's proposal in this context and do not have any major concerns. However, staff is hesitant to propose an increase in the term used for the economic assessment at this time as the Government's proposed cap and trade program may lead to outcomes in the longer term that are difficult to anticipate at the present time.

Review and Assessment of Alternative Framework

OEB staff understands that there would be some form of annual review related to the expenditures and revenue of the community expansion projects. The capital expenditures will be reviewed in individual leave to construct applications or the annual rate setting application where the revenue requirement from the capital expenditures for community expansion projects will be recovered. Revenues related to expansion surcharges and the ITE contribution will be reviewed in rate applications or deferral account disposition applications. OEB staff is therefore not concerned about whether there will be an adequate review.

However, OEB staff is of the opinion that the framework established in this proceeding should be reviewed after a certain number of years to ensure that the framework has provided the desired results and to determine whether there might be a need to address changes in the marketplace or the gas industry as a result of factors such as market forces or public policy. OEB staff submits that the OEB should conduct a full review of the alternative framework established in this proceeding in 2024 or earlier, prior to the utilities filing their rebasing application.

6. Changes to Municipal Franchise Agreements and Certificates of Public Convenience and Necessity to reduce barriers to natural gas expansion, and measures to facilitate the introduction of new entrants to provide service to communities that do not have access to natural gas (Issues 8 and 9)

Conditions or other changes to Municipal Franchise Agreements and Certificates of Public Convenience and Necessity

Union expressed the views that the current Model Franchise Agreement does not impose any specific barriers to expansion. Union proposed that the current Model Franchise Agreement continue to be adopted by all parties across the Province and that any variations should be discouraged. If changes are to be made, Union argued that they should be reviewed in an open and public hearing. Union also stated that it believes that the OEB can review and amend geographic area covered by a specific certificate through an application to do so.⁴⁵

Enbridge indicated that it sees no reasons to impose further conditions or make any changes to the current form of municipal franchise agreement or certificate stating that nothing precludes an unserved municipality from initiating a competitive process to identify potential natural gas service providers.⁴⁶

Dr. Yatchew, on behalf of EPCOR, indicated that subject to negotiation, milestones should be included in the municipal franchisee agreement, but not specifically prescribed by the OEB. He stated that flexibility is an essential feature of commercial transactions, particularly as circumstances and opportunities can differ materially from one location to another.⁴⁷

The current 2000 Model Franchise Agreement was developed following an extensive consultation with the Association of Municipalities of Ontario and natural gas distributors which was followed by a hearing.

In a Report to the Board leading to the 2000 Model Franchise Agreement, the Panel stated the following:

“The Panel notes that the Board does not have the jurisdiction to impose a uniform agreement on the parties. That would be tantamount to a predetermination of the decisions which the Board is required to make under the

⁴⁵ Union’s evidence, Exhibit A, Tab 1, pages 25-26

⁴⁶ Enbridge’s evidence, paragraph 32

⁴⁷ EPCOR’s evidence, paragraph 52

MFact. The purpose of the 2000 MFA is to provide a template to guide the Gas Companies and municipalities as to terms and conditions the Board generally finds reasonable in applications under the MFact.”⁴⁸

OEB staff submits that the OEB has the jurisdiction to consider, on a case by case basis, deviations from the 2000 MFA such as the inclusion of termination provisions if a proponent fails to meet certain milestone dates, as suggested by EPCOR. Alternatively, the OEB could amend the 2000 MFA to include termination provisions, as a default provision.

OEB staff submits that the inclusion of termination provisions should be endorsed by the OEB. In OEB staff’s view, this option is favoured as it would give affected municipalities an opportunity to automatically negotiate alternative commercial arrangements with other proponents if certain milestone dates are not met by another proponent rather than await the outcome of a regulatory proceeding before re-initiating this process. OEB staff submits that this approach is more efficient and timely. OEB staff submits that the OEB should amend the 2000 MFA to include termination provisions, as the default.

More specifically, OEB staff is of the view that a municipal franchise agreement and certificate should automatically expire if construction has not commenced within 3 years of receiving approval by the OEB. Additionally, parties could propose, in the municipal franchise agreement, more granular negotiated provisions that could be linked to other milestone dates such as the filing of a leave to construct application (if applicable) or a rates application.

Processes to facilitate the introduction of new entrants to provide service to communities that do not have access to natural gas

During the course of this proceeding, Dr. Yatchew on behalf of EPCOR suggested that the OEB consider changes that would facilitate competition for the natural gas market in new community expansion. He opined that competition for franchise areas can bring significant benefits to consumers by means of applying lower pressure on costs, promoting innovative service offerings, bringing alternative business models including multi-utilities, and promoting dynamic efficiency.⁴⁹ He suggested that franchise bidding would be a mechanism that can promote the public interest through competition for the market.⁵⁰ Proposed changes included the creation of a registry of interested proponents and a comprehensive database of franchise agreements. He suggested that OEB

⁴⁸ Report to the Board, RP-1999-0048, paragraph 5.1.10

⁴⁹ EPCOR’s evidence, paragraph 17

⁵⁰ Ibid, paragraph 16

approvals should be conditional on the municipality or other governing authority having conducted a process of due diligence. This could be within a range of processes such as a request for information, request for expressions of interest (RFI), request for qualifications, and so forth.⁵¹ He also indicated that subject to negotiations, milestones should be included in the franchise agreement, but not specifically prescribed by the OEB.⁵²

Union provided a list of minimum requirements of an LDC prior to the OEB granting approval of newly established franchise agreements or certificates. These included demonstrated operational capability, the ability to meet core expectations of the OEB for existing natural gas distributors, and demonstrated financial stability.⁵³

Enbridge questioned whether adding new entrants in the natural gas distribution business is in the best interest of the Province. In the case that the OEB finds this to be beneficial, Enbridge argued that new entrants should be required to demonstrate their qualifications as an operator of natural gas facilities in a public forum in addition to demonstrating the economic benefit to the market beyond that provided by incumbent service providers.⁵⁴

OEB staff agrees with Dr. Yatchew that competition for the natural gas market could bring benefits to consumers by means of allowing for innovative service offerings, or alternative business models which could lower prices or allow certain projects to proceed where more conventional approaches to system expansion have failed to be economically feasible. OEB staff believes that a bidding process would be a means to promote the public interest through competition for the community expansion natural gas market.

The corollary issues to this position are:

- (i) Who should conduct the process? The municipalities or the OEB?
- (ii) What should be the selection criteria?

During the course of cross-examination of the EPCOR panel, Ms. DeMarco made reference to the OEB's designation process for the East-West tie transmission line. As part of that proceeding, the OEB established decision criteria for the selection process.⁵⁵ These included:

⁵¹ Ibid, paragraph 50

⁵² Ibid, paragraph 52

⁵³ Union's evidence, Exhibit A, Tab 1, pages 28-29

⁵⁴ Enbridge's evidence, paragraph 33

⁵⁵ EB-2011-0140, Phase 1 Decision and Order (July 12, 2012), page 4

- Organization
- First Nation and Metis participation
- Technical capability
- Financial capability
- Proposed design
- Schedule
- Costs
- Landowner, municipal and community consultation
- First nation and Metis consultation
- Other factors

The filing requirements were developed based on these decision criteria.⁵⁶ The OEB did not articulate an assessment methodology to be applied to the decision criteria nor did it ascribe any relative importance to the decision criteria through a weighting system.⁵⁷

During cross-examination, Dr Yachew opined that it should be incumbent on the municipalities, largely because of subsidiarity⁵⁸, to initiate the RFP and lead the selection process. He stated that this responsibility should ultimately reside with the municipality to come up with the right proposal.⁵⁹ He also stated that while it may be incumbent upon the OEB to review every bid submitted by proponents, it may be sufficient for the OEB just to review the process. He also raised a question on whether reliance on the OEB's evaluation actually absolves the municipality of some form of its duties and responsibilities in exercising good judgement, and investing the necessary resources to make good choices.⁶⁰

OEB staff agrees with Dr. Yachew that the duties and responsibilities to select a party to enter into a municipal franchise agreement should reside with the municipality. However, OEB staff believes that the OEB could facilitate this process by pre-qualifying a pool of potential proponents that would have the requisite financial and technical experience and expertise to operate a natural gas distribution system. OEB staff submits that this approach would serve to minimize duplication of costs and efforts on the part of municipalities. OEB staff also submits that this approach is not only more efficient but would also expedite the evaluation process. Based on this proposal, the

⁵⁶ Ibid, Appendix A

⁵⁷ Ibid, page 8

⁵⁸ Subsidiarity is an organizing principle that matters should be handled by the smallest, lowest or least centralized competent authority. Political decisions should be taken at a local level if possible, rather than by a central authority

⁵⁹ Tr. Volume 7, page 72

⁶⁰ Tr. Volume 7, pages 73-74

municipalities would be responsible to issue the RFI (or some other form of a bidding process) to pre-qualified proponents, and evaluate the bids.

OEB staff submits that the decision criteria for the pre-qualification process should be similar to the criteria used in the East-West tie transmission line proceeding and those proposed by Union in this proceeding. OEB staff proposes that the following information would be provided to the OEB to support a proponent's request for pre-qualification:

1. Technical Capability

The applicant must demonstrate that it has the technical capability to engineer, plan, construct, operate and maintain natural gas distribution facilities, based on experience with projects of equivalent nature. To that end, the following must be filed:

1.1 a discussion of the type of resources, including relevant capability (in-house personnel, contractors, etc.) that would be dedicated to each activity associated with developing, constructing, operating and maintaining the facilities including:

- design;
- engineering;
- material and equipment procurement;
- licensing and permitting;
- completion of environmental assessment and other regulatory approvals;
- consultations, both with First Nation and Métis, and other communities;
- construction;
- operation and maintenance; and
- project management.

1.2 a description of sample projects, and other evidence of experience in Ontario and/or other jurisdictions in developing, constructing and operating a distribution system. The evidence should include a description of experience with:

- the acquisition of land use rights from private landowners and the Crown;
- the acquisition of necessary permits from government agencies;
- environmental assessments;
- landowner and community consultation; and
- completion of the procedural aspects of Crown consultation with First Nations and Métis communities.

1.4 a description of operational capabilities in:

- customer call handling and emergency response; Metering, billing system and related processes;
- Gas supply procurement; and
- Regulatory applications and compliance.

2. Financial Capability

The applicant must demonstrate that it has the financial capability necessary to develop, construct, operate and maintain the distribution facilities. To that end, the applicant shall provide the following:

- 2.1** evidence of the current credit rating of the applicant, its parent or associated companies;
- 2.2** financial statements for each of the past two fiscal years. This may include audited financial statements, annual reports, prospectuses or other such information.
- 2.3** if the applicants needs to raise additional debt or equity, evidence of the applicant's ability to access the debt and equity markets;

The OEB would then, following an application process, evaluate the request and issue a decision on whether the proponent meets the pre-qualification criteria. The end result would be a "registry of interested proponents" as suggested by Dr. Yatchew.

OEB staff also submits that it would be useful for municipalities if the OEB were to provide guidance on information that pre-qualified proponents should include in the RFI submitted to the municipalities.

OEB staff is of the view that at a minimum, the following information should comprise the RFI:

- Project overview and system design
- Costs (based on preliminary estimates)
- Consultations conducted to date
- Preliminary load forecast including penetration rates
- Pro-forma rates and rate structure
- Terms and conditions of service

7. Ontario Government's Cap and Trade Program (Issues 10 and 11)

On February 24, 2016, the Ontario Government introduced new legislation on climate change. The proposed *Climate Change Mitigation and Low Carbon Economy Act* builds on Ontario's recent actions to fight climate change, working with industry and other partners on the design of a cap and trade program. The cap will put a limit on the amount of greenhouse gases that businesses, institutions and households can emit and will put a price on carbon including natural gas. The objective of the cap and trade program is to cut GHG emissions in the Province and encourage the development of clean technologies.

OEB staff expects that the introduction of a cap and trade program could have significant implications on the natural gas sector. Natural gas contributes approximately one-third of Ontario's GHG emissions⁶¹ and therefore the province will need to find ways to reduce the use of natural gas if it intends to achieve its long term GHG reduction targets⁶². There is a possibility that demand for natural gas may decline over time as utilities, businesses and homes implement conservation measures and/or clean technologies. The issue in this proceeding is whether the cap and trade program has an impact on any alternative framework that the OEB may establish to facilitate community expansion.

OEB staff believes that there are two specific issues that the OEB may have to address:

The first issue is whether conversion to natural gas leads to a net reduction in GHG emissions. In its evidence, Union has indicated that the 29 community expansion projects will lead to almost 7,700 tonnes of carbon dioxide (CO₂) reductions each year⁶³. For the four leave to construct applications in EB-2015-0179 (Milverton, Kettle Point, Prince Township and Moraviantown), Union has estimated that converting to natural gas would lead to an 8% reduction in GHG emissions⁶⁴.

With the exception of electricity, conversion from all other commonly used fuel sources would lead to a reduction in GHG emissions. Natural gas is the lowest carbon emitting fossil fuel. Natural gas has the lowest combustion carbon footprint in the hydrocarbon

⁶¹ EB-2015-0179, Exhibit B.Energy Probe.2, Attachment 1, Page 4

⁶² Ontario has targeted 15% reduction in 2020, 37% in 2030 and 80% in 2050 from 1990 emission levels

⁶³ EB-2015-0179, Exhibit B.CCC.5, Page 2

⁶⁴ EB-2015-0179, Exhibit B.SEC.10

family, about half that of coal, two-thirds that of oil and approximately 80% that of propane⁶⁵.

OEB staff is of the opinion that the primary objective of the proceeding is to consider an alternative framework to facilitate the expansion of natural gas in communities that are not currently served. In this context, if the hearing panel is satisfied that converting to natural gas would lead to a net reduction in GHG emissions, there is no further need to examine if there are other alternatives that provide greater GHG emission reductions. OEB staff submits that a net reduction in GHG emissions is a sufficient test in this proceeding to evaluate the impact of a proposed cap and trade program on any alternate framework established to support expansion of natural gas.

The second issue is whether the government's proposal to put a price on carbon emissions will impact the estimated conversion rates and the estimated savings to switch from other alternative fuels to natural gas. Union and Enbridge are of the opinion that pricing of carbon will not impact the estimated conversion rates. Natural gas will further increase its competitive advantage as compared to other fossil fuels such as heating oil and propane. However, with respect to electricity the price advantage of natural gas is likely to decline as a result of carbon pricing. Enbridge has estimated that the annual energy cost saving for a customer converting their heating load from electricity to natural gas will fall from \$2,165 per year to \$2,080 as a result of the cap and trade program⁶⁶. The impact seems fairly minimal and OEB staff agrees that conversion rates are not likely to be impacted.

Customer attachment forecasts

OEB staff also notes that Union has used a conversion rate of 50% in the new communities as opposed to Enbridge's 79% for the first 10 years of the project. In its calculation of overall penetration rates, Enbridge has assumed 100% penetration for new developments within the communities⁶⁷. Using a higher penetration rate improves the economics of the project. OEB staff submits that while Union's penetration rate is reasonable, Enbridge has used a significantly higher penetration rate which is based on survey results from a single community, Fenelon Falls and Bobcaygeon⁶⁸. In response to an undertaking, Enbridge has provided data for eight completed system expansion projects that shows a forecast penetration rate of 62% for the first 10 years⁶⁹. This is

⁶⁵ EB-2016-0004 Transcript, Volume 5, May 11, 2016, Page 15

⁶⁶ Natural gas price will increase \$60 annually as a result of the cap and trade program while electricity prices will decrease by \$24 annually (\$2,165 savings - \$60 - \$24 = \$2,081). Enbridge pre-filed evidence, Page 14

⁶⁷ EB-2016-0004, Enbridge response to Energy Probe IR#7

⁶⁸ EB-2016-0004, Enbridge response to Energy Probe IR#7

⁶⁹ Exhibit J 3.11 (Column 9 divided by Column 5 total, 14,356/23,121 = 62%)

much lower than what Enbridge has assumed for the community expansion projects. If Enbridge were to use a lower penetration rate than 79%, the economics of the projects would further deteriorate. However, OEB staff notes that under its proposed approach, very few Enbridge projects qualify as they are uneconomic under the proposed framework. In the event that the OEB adopt a different approach, it would need to re-examine the expected penetration rates of Enbridge as they are substantially higher than past system expansion projects and not in line with Union's. OEB staff would expect that Union and Enbridge would have similar expected penetration rates.

The difference in penetration rates is due to the survey methodology and interpretation of results by Union and Enbridge. While Union has used a five point scale (extremely likely, very likely, likely to convert, not very likely, not at all likely to convert), Enbridge has used a four point scale (very likely, somewhat likely, not very likely, not at all likely to convert). Union has taken a conservative approach to estimate attachments and has included those that are extremely likely, very likely and 50% of likely to convert⁷⁰. The respondents considered both the conversion costs and volumetric surcharge. Enbridge has used responses that include very likely and somewhat likely for estimating penetration rates. The survey in Fenelon Falls and surrounding areas indicated that 85% of respondents were very likely or somewhat likely to convert⁷¹. However, if only respondents that indicated very likely to convert were included, the penetration rate would drop to 55%.

Moreover, OEB staff notes that conversion rates could be impacted by any future government initiatives that aim to move homes and businesses away from natural gas and on to other clean technologies that lead to a reduction in GHG emissions. The Ontario Government's recently announced Climate Change Action Plan will offer incentives to move homeowners from energy intensive heat and cooling sources to technologies like solar, air-source heat pumps and geothermal systems. The plan will also provide funding to schools, hospitals and universities to improve energy efficiency and renewable energy technologies⁷².

OEB staff submits that the OEB would need to ensure that the projects are feasible with expected penetration rates that are reasonable and not overly reliant on future builds that may not necessarily adopt natural gas as a source of energy. To this end, OEB staff notes that while Union's conversion rates would be reasonable under the above scenario, Enbridge's conversion rates seem high. As noted earlier, Enbridge has forecasted a 100% penetration rate for natural gas in new builds for the community

⁷⁰ Union pre-filed evidence, EB-2015-0179, Exhibit A, Tab 2, Section A, Page 5

⁷¹ Results of Ipsos-Reid Survey, Enbridge response to SEC IR# 6

⁷² Ontario's Five-Year Climate Change Action Plan 2016-2020, Page 26, June 8, 2016

expansion projects and as noted earlier, all new builds may not necessarily adopt natural gas as the preferred source of energy.

Accordingly, OEB staff submits that utilities should be directed to provide in the leave to construct applications, detailed market research findings that support their expected conversion rates. The survey instruments should gauge potential customer's interest to convert after they are informed of the approximate conversion costs and the additional contribution required in rates through the expansion surcharge.

8. Ontario Government's Loan and Grants Program (Issue 12)

The Ontario Government through the Minister of Economic Development, Employment and Infrastructure has announced \$200 million in Natural Gas Access Loans over two years to help communities partner with utilities to extend access to natural gas. The Government has also made available \$30 million in Natural Gas Economic Development grants to accelerate projects with clear economic development potential⁷³.

The utilities (Union and Enbridge) are of the opinion that the ministry expects community expansion projects to exhaust any regulatory flexibility from the OEB before the communities become eligible for provincial funding⁷⁴. In other words, the ministry expects the OEB to take the initial steps to facilitate community expansion before any grants or loans are provided to municipalities and other stakeholders.

However, the government has not provided any details or the criteria under which these grants and loans will be available. Union has noted that it does not expect the grants and loans to be available until 2017 at the earliest⁷⁵.

In Procedural Order No. 3 issued on May 30, 2016, the OEB provided certain guidance on the questions that the parties should address in their submissions. Accordingly, the OEB sought feedback on the optimal use of the loans and grants announced by the ministry.

OEB staff is of the opinion that any grants available through the ministry should be used as a contribution in aid of construction to increase the PI of the project. Union and Enbridge have expressed a similar opinion in their evidence and interrogatory responses. However, any loans that are provided to municipalities or homes and businesses should be utilized to support conversion costs according to OEB staff. OEB

⁷³ February 18, 2015 Letter of the Ontario Energy Board

⁷⁴ EB-2015-0179, Response to CCC IR#16

⁷⁵ EB-2015-0179, Exhibit B.Energy Probe.3

staff expects the loans to be interest free and the funds could support the initial equipment conversion costs. This could lead to higher conversions in the initial years and ensure success of the project.

Enbridge and Union have indicated that any loans should also be used as contribution in aid of construction. OEB staff is not sure whether this is the best approach. A number of community expansion projects require contributions in millions of dollars (\$1.2 million to \$18 million for Enbridge projects⁷⁶ and from \$40,000 to \$30 million for Union projects⁷⁷ to reach a PI of 0.8). The communities in question are small with fairly small municipal budgets. With the exception of a few Union projects, a municipality taking the loan could find it difficult to repay it without further increasing taxes. Consequently, a loan may not be the best option for a number of the municipalities. However, if the loan is channeled to support conversion costs, homeowners and businesses could repay the loans through the savings achieved as a result of converting to natural gas.

9. Other Issues

The Duty to Consult

The duty to consult (and in some cases accommodate) with Aboriginal peoples arises when the Crown contemplates actions or decisions that may affect Aboriginal or Treaty rights. The extent of the duty will depend upon both the strength of the claim to Aboriginal or treaty rights, and the extent of the potential impact. In some cases the duty to consult will give rise to a duty to accommodate – in other words to make changes to (or even cancel) the proposed actions or decision in order to minimize any impacts.

The role of a statutory tribunal such as the OEB with respect to the duty to consult can vary depending on the circumstances. In cases such as a leave to construct where there is an outside proponent, the OEB's role has been to assess whether the duty to consult has been adequately discharged. In cases where the OEB is developing policies that could impact Aboriginal or treaty rights, the OEB itself may be responsible for conducting consultation.

The current process has benefited from extensive participation from Aboriginal groups. In general there appears to be strong support for gas expansion from Aboriginal groups. To OEB staff's knowledge, however, no Aboriginal group is suggesting that this

⁷⁶ Table 5, Enbridge Evidence in EB-2016-0004, Page 27

⁷⁷ EB-2015-0179, Exhibit B.LPMA.13, Attachment 1

proceeding itself triggers the legal duty to consult. The duty to consult only arises where an action or decision may adversely impact an Aboriginal or treaty right. OEB staff is unaware of any Aboriginal or treaty rights related to the provision of natural gas. The evidence and letters of comment filed in this proceeding do not identify any specific Aboriginal or treaty rights relating to the subject matter of this proceeding.

None of this is to suggest that OEB staff does not believe “consultation” is important. In fact, OEB staff has specifically proposed consultation with First Nations and Métis communities (Section 1.2 of proposed criteria) as one of the requirements for proponents to pre-qualify in order to bid for a municipal franchise of communities targeted for gas expansion.

At the hearing, Chief Sault spoke eloquently about the benefits of consultations between Aboriginal groups and gas distributors in providing natural gas to communities that are currently un-serviced. The OEB has also benefited from the extensive input from Aboriginal groups in this proceeding. OEB staff encourages distributors to engage with Aboriginal groups with respect to their expansion activities. However, in OEB staff’s view this proceeding does not trigger the formal duty to consult, as no potential impacts to any Aboriginal or treaty rights have been identified. To the extent any party files argument stating that the duty to consult is triggered by this proceeding, OEB staff will consider these comments and respond in the second round of submissions.

– All of which is respectfully submitted –

Appendix A
To OEB Staff Submission
EB-2016-0004
June 20, 2016

Issues List

EB-2016-0004

1. What is considered a community in the context of this proceeding?
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?
3. Based on a premise that the OEB has the legal authority described in Issue #1, what are the merits of this approach? How should these contributions be treated for ratemaking purposes?
4. Should the OEB consider exemptions or changes to the EBO 188 guidelines for rural, remote and First Nation community expansion projects?
 - 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?
 - 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.
 - 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?
 - 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?
 - 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?

- f) Should the economic, environmental and public interest components in not expanding natural gas service to a specific community be considered? If so how?
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?
 6. Are there other ratemaking or rate recovery approaches that the OEB should consider?
 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?
 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?
 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)
 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?
 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?