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July 11, 2016 **VIA E-MAIL**

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge St.
Toronto, ON
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Dear Ms. Walli:

Re: Vulnerable Energy Consumers Coalition (VECC)
Reply Submissions: EB-2016-0004 Community Expansions

Please find enclosed the Reply Submissions of the Vulnerable Energy Consumers Coalition (VECC) in the above noted proceeding.

Yours truly,

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EB-2016-0004

ONTARIO ENERGY BOARD

IN THE MATTER OF an Application under the Ontario Energy Board's own motion to consider alternative approaches to recover costs of expanding natural gas service to communities that are not currently served (Community Expansion Policy).

REPLY SUBMISSIONS

ON BEHALF OF THE

VULNERABLE ENERGY CONSUMERS COALITION (VECC)

July 11, 2016

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Vulnerable Energy Consumers Coalition (VECC)
Reply Submission - Community Expansion

1. INTRODUCTION

1.1 In its reply, VECC wishes to avoid recapitulating the major points of its first submission and address, as succinctly as possible, the arguments advanced by other interested parties herein.

1.2 We advise that our approach may fail to amplify the positions advanced by other parties that are congruent with the arguments earlier advanced by VECC.

1.3 As well, we apologize if we don't fully attribute a particular position to all its adherents when we address such a position. We would also ask that any failure on our part to address an assertion in the initial arguments of other parties not be taken as concurrence with the same. We have responded directly to only one argument, that of Anwaatin which explicitly references VECC.

1.4 For ease of reply, we have summarized the key points of our initial submission as they pertain to the views expressed by other parties.

I. **The Board should maintain EBO 188 policies, but allow modest modifications which would expand the number of communities which could be served under these policies.**

II. **Supplemental sources of revenues should be used to allow those who will benefit from natural gas to finance bringing this service to their communities.**

III. **Risk of expansion should be borne by all parties.**

IV. **The Board should await explicit direction from the Government on how loans and grants will be made available for expansion into new**

communities. The announced government funding through grants or loans should be approved for the project in order to be approved.

V. If a subsidy from existing customers is necessary, it should be derived from rates collected on an intra natural gas utility basis and be available to the lowest bidder in the competitive process.

I. EBO 188

2.1 As noted in our original submission, VECC does not support the wholesale exemptions or changes to EBO 188 as proposed by either gas utility. As with a number of other parties we believe that modest changes to the current policy are sufficient to allow access to natural gas in communities where there are clear financial (stage 2) benefits.

2.2 A number of parties (e.g. Board Staff, LPMA etc.) have provided suggestions as to the PI that should be used for the investment or rolling portfolio, and whether it should be calculated with or without the inclusion or expansion rate riders. We do not have a specific recommendation on this since, it would seem to us, the selections of particular variables are somewhat arbitrary.

2.3 Similarly parties, including EGD, have argued for expansion of the project horizon to allow supplemental revenues or the calculation of the net benefits to be more favourable. We agree that such changes could be made with minimal impact on existing customers.

2.4 We also note and believe worth considering the arguments of LPMA on refining the definitions of communities which any revised policy would apply to[1].

[1] See LPMA, pg. 17

2.5 It is clear that if the Board were to allow portfolios to be managed at a PI of I.0 without the inclusion of “safety buffers” like those employed by Union that some new communities would become eligible for expansion.

II. Supplemental Revenues

3.1 VECC supports the use of expansion rate riders (TES, SES and ITE) to supplement the revenues for projects which have a PI below 0.8. Revenues from supplemental sources should be treated as contributions-in-aid of construction.

3.2 Some parties, like LPMA have made suggestions which go to making the application of these rate riders more flexible. We agree with the gist of these arguments as it seems to us that there is little to be gained by slavish adherence to rate rider amounts or term of the riders in the absence of the specific details of a given project. In our view, the Board should deal with the type of supplemental revenue sources from the community and their term in the specifics of the application.

III. Who Bears the Risk?

3.3 As is the case for a number of parties, VECC is of the view that the proposals of the two incumbent gas utilities inappropriately shifts 100% of the risk for these projects to ratepayers while retaining the benefits for their shareholder.

3.4 By their very nature the “community expansion” projects carry an elevated level of risk. The cost of construction is more costly and less certain due to the distances and location of the potential communities. Attachment rates have been shown to be difficult to forecast in communities which have little experience in using natural gas.

3.5 The incumbent utilities have proposed mechanisms like deferral accounts to ensure that they are not exposed to these risks. These are proposed under the ambit of protecting both ratepayers and shareholders. This is not the case. The fact is that there is very little benefit, if any, for ratepayers in establishing deferral accounts. In fact, such accounts simply protect the utility from cost overruns and revenue shortfalls. If projects are properly scrutinized in the application process there is no reason to protect shareholders from the misalignment of costs and revenues. We see no distinction to be made between these projects and the plethora of other expansion projects which are undertaken by the utilities. In any event, we doubt that any of the projects on an individual basis meet the Board's own requirements of materiality for the establishment of deferral or variances accounts.

IV. Government Policy

4.1 Many parties, including Union and EGD have argued that the Board would be non-responsive to government policy or direction if it were not to take action that would expand system expansion in the immediate term. For example, as a proponent of subsidized expansion to communities currently uneconomic to serve, Union Gas is confident of the Government's blessing on the enterprise:

> "The combined implication of the LTEP, the letters from both the Minister and the Board, as well as the numerous requests from potential customers, is that the issue before the Board in this generic proceeding is not whether regulatory changes should be implemented to facilitate the expansion of natural gas distribution services, but rather how those changes are to be implemented. Consequently, the question for the Board in this proceeding is to what extent the current requirements established in EBO 188 are to be amended or applied, either working within existing parameters while permitting some internal utility cross-subsidization or ignoring the established mechanism to implement a global subsidy." [2]

VECC disagrees with this conclusion.

[2] Union Submission, June 20, 2016,pp2-3

4.2 On the other hand, opponents of the Union and Enbridge plans have a very different read on the events leading up to the hearing. The CPA submission states the following:

> "There were several assertions by witnesses that the uneconomic expansion of natural gas distribution is government policy. It is not. Government policy is reflected by legislation, regulations, budgets, and Ministerial Directives. None of those exist in this case. The government has mused about possible expansion and the consideration of potential options, but such musings cannot be said to be official policy." [3]

4.3 And while the Government's cap and trade policy is set to be implemented, eroding the substantial price advantage that natural gas has over other heating fuels, more doubt is cast upon the government commitment to promotion of otherwise uneconomic expansion by the government itself. Environmental Defense (ED) observed:

> "For example, Enbridge and Union commissioned a report by ICF International on the impact of Ontario's emissions policy on natural gas demand.5 It found that residential, commercial, and institutional natural gas consumption could need to decline by approximately 40% by 2030.6 It also found that this would involve the electrification of buildings (i.e. converting heating from natural gas to electrical heating, such as geothermal).7 This may mean that Ontario would be simultaneously subsidizing conversions to natural gas and away from natural gas! The utilities should be expected to address this significant possibility."[4]

4.4 There is the outstanding 2015 government promise of $230M in loans and grants to contend with together with the prospect of clashing policies. The Ontario Geothermal Association (OGA) submits:

[3] CPA Submission June 20, 2016, para 42

[4] ED Submission June 20, 2016, para 6 . It should also be noted that this lack of certainty has an impact on more than EBO 188 parameters. It is difficult to understand how the Board should calculate or impose an advanced reinforcement charge as part of the costs of expansion on any recipient of a natural gas distribution franchise. The question naturally arises whether these expenditures will actually be needed.

> "Leaving aside whether the Board has the jurisdiction to enact subsidies, it is questionable whether the Board should do so, or whether this is a policy decision within the ambit of the government rather than the regulator. That is especially true since the government has already determined the nature and amounts of the subsidies - $200 million of loans, and $30 million of grants – that it believes are appropriate." [5]

4.5 To date the Government has written a singular letter to the Board and announced potential funding. No legislation has been passed. No details have been provided as to how government funds are to be used or allocated. It therefore seems somewhat fallacious to argue for or against subsidies (intra or inter utility) in the policy vacuum which now exists. What we have argued is that if subsidies are to be implemented they should be transparent, administered to all natural gas ratepayers and distributed in the most efficient manner possible.

4.6 Board Staff have argued on how government announced resources could be used, including how they might be used to improve attachment rates. But this is this is simply speculation. Other parties like LPMA have proposed funding be used for education on the economic benefits of using natural gas, also to improve attachment rates. Again while we think these all good ideas whether they come to fruition is an entirely different matter. For example, it is just as valid to speculate that the Ontario Government will tie funding to those communities which can demonstrate the largest greenhouse gas emission reduction. This would logically tie the policy of natural gas expansion with the policy of CHG reduction. It might also put a Board decision to change expansion policy at odds with government policy. But again this is simply speculation.

4.7 The OEB is thus left in the unhappy position of both determining the desirability of uneconomic expansion of natural gas service to unserved communities, the framework for the expansion, the effect on existing and future alternate energy markets, the environmental implications, and scope, funding, and process for change. This is too much on the regulatory plate.

[5] OGA Submission June 20, 2016 p.5

4.8 Anyone, including the Board, can speculate as to how the government will implement its policy. Simply put we do not think a singular letter from the Minister provides the finality of the matter that would allow the Board to mandate subsidies. What the Board might consider is reporting to the government on the matter of the use of subsidies. As VECC has suggested, any OEB adopted framework for subsidies should incorporate some form of symmetry with any Government program.

IV. Subsidy Regime

5.1 VECC set out its position that in its initial submission that if the OEB was to determine that funds made available from existing customers should assist in the expansion of natural gas service to unserved communities that any such funding should come from monies from rates collected from customers across all the natural gas distribution utilities.

5.2 The reasons advanced for such a funding mechanism include the efficiency of such an approach which enables the up-front costs of service expansion to be shared on a province wide basis and enables competition for the franchise by levelling the playing field between new entrant and incumbent utilities in terms of the financing of such expansion. The example of the NCF implemented by the CRTC, as described in VECC's evidence herein also supports the potential success of such a model for natural gas expansion.

5.3 There are objections advanced by a number of parties associated with the jurisdiction of the Board to approve an intra-utility regime for expansion funding that VECC wishes to address. These go directly to the ability of the Board to put in place such intra-utility funding rather than the policy merits or results of such a measure.

5.4 A trenchant objection to the creation of an intra-utility expansion fund goes directly to the perceived violation of the principle of cost causality in the setting of rates. The contribution of existing customers to the expansion of the system through an intra-utility funding mechanism (gleaning fairly modest economic benefits of some $.50 per year per customer noted in by a Union witness in this proceeding[6]), in at least one opposing view, does not promote rational expansion, nor is it congruent with rate-making principles. [7]

5.5 However, in VECC's view, the submissions in support of a traditional cost of service approach to ratemaking negating potential funding of expansion projects based on contribution in rates from all customers ignores the current state of the judicial approach. There has been judicial acceptance of the setting of just and reasonable rates, not simply on the basis of cost causality, but based upon its authority to adopt "any method or technique that it considers appropriate" pursuant to sec 15(3) of the *OEB Act*[8].

5.6 In employing the above-noted section, the Board may set rates to accomplish its objectives pursuant to sec. 2 of the Act including rational expansion of the natural gas system network or protection of consumer interests.[9]

5.7 This means that it is not strict adherence to cost causality that determines the acceptability of any expansion funding plan. Rather, it is the overall rationality of the expansion plan and its fairness to the interests of consumers. This may mean that the rates that are ultimately set comprehend funding similar to that put in place to enable telecommunications network expansion. It may also mean that the matrix of considerations associated with expansion as set out in VECC's initial submissions may not favour any form of subsidy.

[6] Transcript Vol 6 p. 86 testimony of Mr. Okrucky
[7] For example Parkland Fuels submission, p. 5
[8] Ontario Energy Board Act 1998, S.O. chapter 15 Schedule B, section 15(3)
[9] Advocacy Centre for Tenants v. Ontario (Energy Board) [2008] O.J. 1970 para 55

5.8 The incumbent utilities make heroic efforts to distance their plans for implementing expansion based on contributions from existing customers from the concept of an intra-utility expansion fund. It is to be noted that this tack allows them to escape the possible provision of an impetus to franchise competition as well as the loss of potential rate base.

5.9 In VECC's view, the requisite balancing of interests between the regulated utility and its customer must still occur in the event of any intra-utility funding , in the same way that it occurs now when pass through expenditures are considered as part of the rate making process. The approach of the Supreme Court of Canada in the Bell Aliant decision allocated funds derived from rates from regulated local telephone service to unregulated broadband services seems to be a difficult fit with this concept advanced by Parkland that the making of reasonable rates must only involve a balancing between a customer and that customer's utility.

5.10 The argument has also been advanced that the collection of the monies from rates to finance such a fund would constitute an impermissible tax upon ratepayers that would be ultra viries of the Board.

5.11 The case for regarding any additional rates levy on existing gas customers to fund an intra- utility expansion fund as an impermissible tax is principally advanced by the Canadian Propane Association (CPA) submission, and supported by Union Gas.

5.12 The argument appears to be primarily based on the Supreme Court of Canada decision in *Re: Eurig Estate*[10]*.* In the case, the Court found that the levying of probate fees, that were in excess of the costs to the province of Ontario for granting letters probate was the levying of a tax. The fees were intended to

[10] [1998] 2 SCR 565

generate a surplus for general revenue, and thus were to be used for the "public purpose of defraying the costs of court administration in general".[11]

5.13 In the result, the probate levy was considered to be a tax impermissibly imposed by Cabinet contrary to the terms of the *Constitution Act 1867*.

5.14 The problem with the application of the principles of the *Eurig* case to the concept of the creation of an intra-utility fund is that it conflates the expansion funding pursuant to the OEB's statutory objectives with the levying of a fee designed to collect and augment government revenue. In the former case, rates from natural gas utility customers allow for a program of rational expansion of the network (if that is desirable) and protection of consumer interests, in accordance with the Board's mandate. While rational expansion is a public purpose in a general sense of the word, the OEB would not be t levying direct tax without the requisite legislative approval similar to the result in *Eurig*. The setting of rates to fund intra-utility expansion within the OEB's mandate to carry out its stated objectives is not the levying of a fee to generate a surplus to fund general Board administrative purposes.

5.15 As a consequence, the premise for the "impermissible tax" argument fails largely because it attempts to colour a potential initiative dependent on the exercise of the Board's statutory mandate in fashioning rates as an exercise that merely generates revenue untethered to the objectives of the *OEB Act.* As the case law demonstrates, the Board's authority extends beyond the setting of rates solely dictated by cost causality.

5.16 Finally, the principle of implied exclusion has been raised as a possible bar to the consideration of the implementation of an intra-utility natural gas service expansion fund. This principle essentially states that if the legislature had wished to give such powers to the Board it would have included them in the *OEB Act*.

[11] Ibid at p.5

5.17 Support for this proposition is sought from the fact that the rural and remote electricity rate assistance and Ontario Electricity Support Program have been explicitly incorporated into the legislative powers of the OEB. If the OEB already had such powers as part of its rate-making responsibilities that allowed funding for objectives that generated results not in strict adherence to cost causality, why were specific provisions required?

5.18 However, in assessing the implications of the statutory inclusions set out above, it is important to note the historic basis for the rural and remote rate assistance set out in the evidence of Bruce Bacon on behalf of Kincardine and other municipalities in this proceeding. This rate assistance plan was put in place in 1981, and replaced a regime of direct government subsidies to enable rural electrification.[12] It is reasonable to expect that legislators would not wish to depart from tradition when the new restructuring legislation was enacted.

5.19 The Ontario Electricity Support Program was put in place to address acute and immediate affordability programs associated with the impact of electricity bills on low income consumers. The legislation represented a commitment not only from the Board, but the Province, in alleviation of hardship. Swift implementation was necessary. It is not unreasonable to assume that unnecessary delays associated with squabbles over jurisdiction with any of the 70 odd utilities were sought to be avoided.

Duty to Consult

6.1 The Anwaatin has made an initial submission with respect alleging a failure to consult on the part of one of the proponents of community expansion, and consumer representatives including VECC. In the case of VECC, it is stated that

[12] Rural Rate Assistance as a rate-making or rate recovery approach which the OEB should consider when assessing the generic hearing issues related to natural gas system expansion, Bruce Bacon, March 21 2016

VECC, in this proceeding, purports to speak on behalf of constituents including First Nations.

6.2 VECC would note that it is not its practice to arrogate to itself the overall superintendence of individual group or community interests that are separately represented. This is particularly the case here where First Nations are separately represented and where they may present evidence, cross examine witnesses and make submissions as to the appropriate result.

6.3 As is the case where there is separate representation of other residential consumers with special interests that also fall within the category of vulnerable consumers because of income or status, VECC does not claim overall hegemony over the positions that may be advanced on their behalf.

6.4 VECC also notes that the purpose of this generic proceeding is to obtain the views and input of all interested parties with a view to determining an appropriate framework for any future expansion of natural gas services. VECC, along with other parties herein, has had the benefit of the Anwaatin intervention, and their position in the context of this proceeding. VECC has, of course, considered the same in making its final submissions herein.

Reasonably Incurred Costs

7.1 VECC submits that its participation in this proceeding has been focused and responsible. Accordingly, VECC requests an award of costs in the amount of 100% of its reasonably-incurred fees and disbursements.

Respectfully Submitted this 11th day of July 2016