

July 11, 2016

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

RE: EB-2016-0004 – Final Submissions of the Consumers Council of Canada – Natural Gas Community Expansion – Generic Proceeding – Second Submission

Please find, attached, the Final Submissions of the Consumers Council of Canada in the above-referenced proceeding.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC:

All Parties
Michael Buonaguro, Counsel
Ken Whitehurst, Consumers Council of Canada

SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA

RE: NATURAL GAS COMMUNITY EXPANSION – GENERIC PROCEEDING

EB-2016-0004

July 11, 2016

I. INTRODUCTION:

On February 5, 2016, the Ontario Energy Board (“Board” or “OEB”) issued a Notice of Hearing for a generic proceeding to consider potential alternative approaches to recover the costs of expanding natural gas service to communities that are currently not served.

Following the oral hearing phase of the proceeding the Board, the Board established a schedule for the final submissions and expanded the scope of some of the issues set out in the approved Issues List. The Board provided for two rounds of submissions. On June 20, 2016, the first set of submissions were filed by parties. These are the reply submissions of the Consumers Council of Canada (the “Council”).

The Council has reviewed the submissions made by other parties. Having considered those submissions the Council has not changed its overall positions on the issues:

- The Council continues to support the fundamental objective of the EBO 188 Guidelines that existing customers should be held harmless from the cost of providing service to new customers;
- Those that directly and materially benefit from natural gas expansion are the ones that should fund expansion;
- Any explicit subsidies for projects that would otherwise be uneconomic should be funded through the province’s general revenue and not by existing natural gas customers. If the Government of Ontario is making an explicit policy choice to expand natural gas, that policy should be funded through the tax base; and
- Changes to the EBO 188 Guidelines should be permitted to allow for expansion related surcharges to facilitate the recovery of the expansion costs from the new customers served by the expansion, with the size and duration of the surcharge determined based on the specifics of the proposed project economics.

II. SUBMISSIONS:

The Council intends to address some of the submissions in a few discrete areas in order to clarify the record for the Board:

- The cost of natural gas service relative to alternative fuels
- Concerns of the First Nations Communities
- Jurisdiction to create a universal fund
- Risks

Natural Gas vs. Alternative Fuels:

In the Council's view the single material flaw in the Board's prevailing EBO 188 Guidelines is the requirement that the gap between the economics of a proposed expansion project (assuming prevailing rates) and a PI of 1.0 (or a PI as low as .8 depending on the ability of other projects to absorb projects that fail to achieve a PI of 1.0) be filled by a contribution in aid of construction (a "CIAC"). The inability to close the gap in any other way hinders potential new customers from accessing whatever annual net savings may exist between their existing energy source and natural gas service. Creating the ability for distributors to close that gap using a surcharge, in the Council's view, adequately empowers new customers by allowing them to appropriately fund the costs to serve them by accessing the annual savings, if any, they can realize by converting to natural gas. Where delivering natural gas to potential new customers is more expensive than the status quo energy source then the project is objectively uneconomic, as illustrated by the fact that the distributor will not be able to propose a surcharge that adequately funds the project while maintaining savings for new customers. Such uneconomic projects, the Council submits, should not proceed.

The Council respectfully submits that many of the parties advocating for material, explicit subsidies from existing customers to fund natural gas expansion repeatedly and inappropriately assert that natural gas is definitively cheaper than alternative fuels in all areas of the Province, and that this proceeding is simply about allowing un-served communities to benefit from this cheaper alternative. In each case the parties asserting the cost advantage of natural gas completely ignore the distribution related cost differential associated with delivering natural gas to un-served communities, relying solely on a point in time commodity-based differential. What is outlined below are only four examples of parties making submissions that rely on the (incorrect) assertion that delivering natural gas to customers is universally more economic than the alternatives (emphasis added):

1. *If the existing framework is maintained, which as noted would have the effect of forestalling the expansion of gas service to new communities, consumers in unserved rural and northern Ontario communities would need to continue their reliance on more costly energy sources. As described in Ex. S15.Union.Energy Probe.15(d) in EB-2016-0004, whereas the estimated annual cost of energy for a typical residential customer using natural gas would be \$844, the equivalent cost would be \$2,058 for a customer using propane, \$2,554 for a customer using furnace oil and \$3,338 for a customer using*

- electricity on a time-of-use basis. Even when conversion costs are accounted for, access to natural gas service can provide significant savings for energy customers. Moreover, since 2006 the annual cost of natural gas has decreased by 31% whereas the annual cost of propane, furnace oil and electricity has increased by an average of 38%.¹³ If these trends continue, the cost differential between natural gas and other energy sources would continue to grow.¹*
- 2. As it is currently understood by Enbridge the Province's cap and trade program slated for implementation in 2017 is expected to have the effect of increasing the cost of all fossil fuels. Since natural gas is the least carbon intensive of fossil fuels its price advantage over heating oil and propane is expected to increase, making natural gas the most cost effective alternative to these fuels for the foreseeable future. During the hearing Enbridge pointed out that even when carbon is priced at a level of \$200 per tonne natural gas retains a significant price advantage over other energy alternatives (Transcript Volume 3, page 75, and Exhibit J3.2). Ex. J3.2 shows that natural gas will retain a 38% price advantage over its nearest competitor propane even with carbon priced at \$200 per tonne.²*
 - 3. Anwaatin submits that access to natural gas as a replacement for wood burning stoves and electrical heating is integral for First Nations and will significantly reduce the costs to First Nations households, and address certain indoor air quality and related health issues faced by First Nations.³*
 - 4. The differential in the cost of heating homes with electricity compared to gas will increase. Currently the cost savings resulting from the switch from electricity heating to gas heating can be two thousand dollars per year or higher. This differential is even greater in the rural and remote parts of Northern Ontario that face colder weather. The ability to bring lower cost energy to these markets is a central factor driving the Ontario natural gas initiative.⁴*

The Council respectfully submits that it is critically important for the Board to recognize that the economics of natural gas as against alternative sources of energy must be evaluated based on all the relevant costs.

As the Council noted in its original submission Exhibit K2.1 provides a proxy illustration of the total annual costs to serve each of the proposed new customers for each of EGD's proposed projects. Exhibit K2.1 shows that the vast majority of EGD's proposed projects result in an annual cost of natural gas that is more expensive than the average annual cost of the status quo alternative energy sources, even when accounting for less than the full cost of

¹ Union Argument page 23.

² EGD Argument page 11.

³ Anwaatin Argument page 14.

⁴ EPCOR Argument page 2.

the projects.⁵ Yet EGD and others, as noted above, would have the Board ignore the fact that many of the projects that have been or will be put forward result in higher total costs than the status quo; the Council respectfully submits that such willful ignorance in the pursuit of what are ultimately uneconomic projects runs contrary to the Board's mandate to facilitate the rational expansion of the natural gas. The framework approved by the Board (as is the case with the framework supported by the Council) should never automatically provide approval of projects that result in higher total energy costs.

Concerns of the First Nations Communities:

Anwaatin Inc. is an indigenous business corporation that works with indigenous communities in linked energy markets that include Ontario, Quebec, California and Manitoba. Anwaatin Inc. set out the following positions in its initial submission:

- a) Anwaatin submits that the Board should authorize inter-utility cross-subsidization of natural gas community expansion projects and disburse such subsidies through a universal service fund;
- b) Anwaatin submits the Board should ensure that the natural gas community expansion framework arising from this proceeding places a super-priority on the expansion of natural gas to energy-poor First Nations as quickly as possible; and
- c) Anwaatin submits that the Board should require that both natural gas companies and municipalities be required to consult and engage with affected and potentially-affected First Nations as part of any process to grant a municipal franchise to distribute natural gas.

Anwaatin also pointed to the need to address energy poverty issues in First Nations communities through access to affordable, reliable, sustainable and modern energy access. ⁶

The Ontario Government Climate Change Action Plan ("CCAP") released on June 8, 2016 provides for comprehensive commitments on the part of the Ontario Government to partner with First Nations and metis communities to reduce emissions and transition to a low-carbon economy. The CCAP specifically refers to working in partnership to ensure a transition to non-fossil fuel energy in a way that minimizes the impact on communities. This could be through investments in energy efficiency, micro-grids and renewable energy where feasible, and could include other forms of transition assistance.⁷

⁵ Exhibit K2.1 is based only the requirement that new customers provide revenue to fund projects to a PI of .8; if required to fund the full costs associated with the expansion projects the annual cost of natural gas will go up across all the projects, resulting in almost all if not all of the projects showing annual costs of natural gas service that are more expensive then the status quo alternative costs.

⁶ Anwaatin Argument, p. 3

⁷Ontario Climate Change Action Plan, p. 27

The Council agrees that there is an urgent need to address energy poverty issues both with respect to the First Nations and Metis communities and more broadly. The Council does not, however, accept that changing the EBO 188 Guidelines to facilitate uneconomic expansions with cross subsidies from existing natural gas consumers is the appropriate approach to address these issues. In addition to obfuscating the actual economics of natural gas distribution, doing so would also, it appears to the Council, work against the stated provincial objective to transition to non-fossil fuel energy.

Anwaatin and others support a universal fund to finance expansions to rural, remote and First Nations communities.⁸ The Council submits that assistance to these communities with respect to energy should not be funded through rates but rather through general revenue and coordinated with other more broad based programs.⁹ There may well be more cost-effective ways to address energy poverty issues that also align with Government's climate change policies. There may also be Federal programs focused on ensuring these communities have access to affordable energy.

The Council is concerned that in light of these programs focused on bringing renewable energy to First Nations communities, natural gas expansion could lead to stranded assets (which are paid for by remaining ratepayers) in the future. To facilitate uneconomic expansion now would not be prudent, and may well be premature when it is clear that Provincial and Federal programs to address energy poverty through other means (energy efficiency, renewable energy development, micro-grids etc.) have been announced and some are already in place.

Jurisdiction to Implement a "Universal Fund" under s. 36 of the OEB Act

The Council notes that there are already several detailed submissions on the record with respect to the jurisdiction of the Board as it relates to the possibility of requiring ratepayers being served by one regulated distributor to contribute to the costs incurred by other distributors through the operation of s. 36 of the OEB Act, and so is wary of adding unnecessarily to the record on that issue. Accordingly, the Council will limit its reply on the jurisdictional issue to the following discrete comments.

As noted in its original submission, the Council submits that the Board's jurisdiction under s. 36 of the OEB Act is limited, as it relates to distribution of natural gas, to the setting of just and reasonable rates for the distribution of natural gas by a regulated distributor to its customers. In the Council's view submissions that seek to establish what appears to be an unlimited jurisdiction on the part of the OEB under s. 36 of the OEB Act to recover an unlimited amount of revenue from distribution customers of any distributor and re-distribute that revenue to any other distributor make those submissions based on the presupposition that such jurisdiction exists. Put more simply, such submissions posit the existence of that

⁸ Anwaatin Argument, p. 8

⁹ The CCAP also refers to the Ontario Aboriginal Loan Guarantee Program, which is already working to support Indigenous participation in new transmission and renewable energy projects such as wind, solar and hydroelectric. CCAP, p. 27

jurisdiction, and based on that original assertion read into the Act an interpretation that supports that conclusion.

In the Council's submission the appropriate way to interpret s. 36 is to approach it without a view to establishing a particular breadth of power; doing so, in the Council's submission, reveals the appropriate delineation of the Board's authority.

Specific to the distribution of natural gas, s. 36 (1) begins with the simple assertion that gas distributors cannot charge for distribution except in accordance with an order of the Board. S. 36(2) grants the requisite authority to the Board to make orders approving or fixing just and reasonable rates for the distribution of natural gas, with the effect that distributors can apply to the Board for a rate order so they can charge their customers for distribution service.

S. 36(6) establishes that the burden of proof is on the applicant in an application for approval of distribution rates. In almost all cases the applicant is the distributor, seeking approval of the rates it intends to charge for its distribution services, so naturally it is appropriate that the burden would be on the applicant distributor to "prove" that its rates are just and reasonable.¹⁰ The distributor is the party that is best able to provide evidence about the nature and costs of its distribution service. To expect some other party to bear the burden of proving that the distributor's proposed rates are just and reasonable would not make sense.

Similarly, and perhaps most importantly, it does not make sense to impose such a burden of proof on an applicant distributor for the rates it would have to charge its customers in relation to distribution service it is not, in fact, providing, as would be the case if a "universal fund" related rate were within the jurisdiction of the Board. If s. 36 goes beyond the relationship between an applicant distributor and the appropriateness of the rates it charges its customers for its distribution services and extends to the consideration of rates charged by the distributor to its customers for, in essence, the distribution services provided by every regulated distributor in the province, it would mean that in every instance where a distributor applied for rates under s. 36 it would bear the burden of proving not only the appropriateness of the rates it charges in relation to its own costs, but also the costs of all other distributors that may be the recipients of the revenue collected by the applicant distributor. In the Council's view that is a *prima facie* unreasonable interpretation of the burden imposed on applicants under s. 36.

The reading of s. 36 put forward by the Council is further supported by s. 36(7), which specifies that when (as in this case) either the Board or the Minister initiates a proceeding on its own motion to establish whether the rates to be charged by a distributor are just and reasonable that distributor, despite not having applied for rates, bears the evidentiary burden. Again, putting the statutory burden of proof on a distributor to not only prove that

¹⁰ The Council is aware that on occasion a non-distributor can apply to the Board to challenge whether a particular distributor's rates are just and reasonable, and presumably in such instances the non-distributor takes on the burden of proof with respect to the component of the rates they are challenging as not being just and/or reasonable.

its own cost structure produces rates that are just and reasonable, but also prove that the costs of all other distributors that may access revenue generated by its rates are just and reasonable is, in the Council's view, a patently inappropriate reading of the scope of s. 36.

It is no coincidence, the Council submits, that even though the rate powers of the Board under s. 78 of the OEB Act are, so far as they relate to the distribution of electricity, identical to the rate powers of the Board as they relate to the distribution of natural gas under s. 36, the power of the Board to provide RRRP relief to electricity customers is under s. 79 of the OEB Act, a power that does not include any burden on electricity distributors to establish that the rates they charge in relation to such relief are just and reasonable. In fact, the specifics of the relief are controlled almost entirely by statute, with the OEB retaining very little in the way of discretion when establishing and administering relief. S. 78 as it relates to electricity distribution and s. 36 as it relates to natural gas distribution are both clearly intended as mechanisms to allow distributors to apply for and justify appropriate rates to charge their customers in relation to their distribution services. To the extent the OEB Act provides a mechanism for, essentially, a universal fund in relation to the distribution of electricity, the OEB Act provides a mechanism that does not impose any burdens on distributors to justify the amounts collected and paid out.

Risks:

Union, in its submission, has stated that its approach strikes a balance between the interests of current and future ratepayers, with limited subsidization and minimal rate impacts. Union's position is that moderate cross-subsidization from existing customers is acceptable, provided that long-term rate impacts are reasonable. At the same time Union has said that any proposal for inter-utility subsidization would also offend several rate-making principles including the "benefits follow cost" principle that consumers should only bear the costs for which they are responsible.¹¹

The Council has supported the principle that benefits should follow cost and does not accept that Union and EGD's proposals are consistent with that approach. It is entirely based on an idea that the limited subsidization would be acceptable to its existing customers. The problem with the utility approaches, from the Council's perspective, is that all of the risk associated with the expansion, as proposed, falls on the customer base. These risks include:

- The risk that the proposed customer attachment forecasts will be wrong, potentially increasing the level of subsidization from existing customers;
- The risk that the proposed capital cost estimates will be wrong, potentially increasing the level of subsidization from existing customers;
- The risk that the Cap and Trade Program will impact the competitiveness of natural gas and ultimately the attachment rates;

¹¹ Union Argument, pp. 9-13

- The risk that the policies and programs that ultimately result from the new CCAP will impact the natural gas sector;
- The risk that a new Long Term Energy Plan may impact the competitiveness of natural gas.

The Council submits that under its proposed framework these risks are not eliminated. However, it is a framework that better balances the interests of current and future ratepayers by maintaining the principle that benefits follow cost. Those gaining access to natural gas and its benefits will ultimately fund the costs associated with that access.

III. CONCLUSION:

The Council notes that this is the first time since the EBO 188 Guidelines were implemented that the Board has, in a substantive way, sought to review whether changes to the guidelines might be appropriate in order to facilitate the expansion of natural gas service to un-served parts of the Province, and that such a review is being done at a time where the role of natural gas service as part of the suite of energy alternatives in the province is at its most uncertain as a result of pending cap and trade impacts and the provincial government's Climate Change Action Plan. In this environment, the Council submits, it is most appropriate for the Board to proceed with caution.

All parties, the Council believes, support changes to the existing EBO 188 Guidelines that facilitate the ability of potential new customers to fund expansions they desire through the additional tools of expansion surcharges and similar adjustments to the existing guidelines. As noted by the Council in its original submission these proposed changes should facilitate significant numbers of expansion projects in the near term, to the extent any proposed projects have the potential to provide material benefits to new customers (without those benefits relying on, in fact, subsidies from existing customers). Although ostensibly such changes do not create explicit subsidies from existing customers to new customers, the changes do materially increase the risk to existing customers to the extent that such projects will proceed on the basis of forecast (and therefore at risk) revenue from surcharges charged to customers as opposed to the precondition of CIACs collected from new customers prior to construction (and therefore at no risk to existing customers). In the Council's view, in the current context, its proposed changes to the EBO 188 Guidelines are an appropriate response to the call for a review as to how to facilitate rational expansion by enabling those that may materially benefit from expansion to take steps to move expansion projects forward without unduly burdening or putting at risk existing customers.

IV. COSTS:

The Council requests that it be awarded its reasonably incurred costs related to its participation in this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 11th DAY OF JULY, 2011