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July 11, 2016

Delivered by RESS, Email & Courier

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

Dear Ms. Walli:

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

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

Yours truly,

BORDEN LADNER GERVAIS LLP

Original signed by John A.D. Vellone

John A.D. Vellone
JADV/bp
Encl.

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

TOR01: 6398414: v1

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

**SOUTHERN BRUCE MUNICIPALITIES
REPLY SUBMISSIONS**

July 11, 2016

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**SOUTHERN BRUCE MUNICIPALITIES
REPLY SUBMISSIONS**

A. INTRODUCTION

1. We make these submissions on behalf of the Municipality of Kincardine, the Municipality of Arran-Elderslie and the Township of Huron-Kinloss (“Southern Bruce”) to the Ontario Energy Board (the “OEB” or the “Board”) in reply to the submissions received from Anwaatin Inc. (“Anwaatin”); the Building Owners and Managers Association, Greater Toronto (“BOMA”); Board Staff (“Board Staff”); Consumers Council of Canada (“CCC”); Canadian Propane Association (“CPA”); Environmental Defence (“ED”); Enbridge Gas Distribution Inc. (“Enbridge”); Energy Probe Research Foundation (“EP”); EPCOR Utilities Inc. (“EPCOR”); Federation of Rental-housing Providers of Ontario (“FRPO”); GreenField Speciality Alcohols Inc. (“GreenField”); Industrial Gas Users Association (“IGUA”); London Property Management Association (“LPMA”); the Northwestern Ontario Associated Chamber of Commerce, the Northwestern Ontario Municipal Association and Common Voice Northwest (“NOACC”); Northeast Midstream LP (“Northeast”); Northern Cross Energy Limited (“NCE”); Ontario Geothermal Association (“OGA”); Ontario Petroleum Institute (“OPI”); Ontario Sustainable Energy Association (“OSEA”); Parkland Fuel Corporation (“Parkland”); School Energy Coalition (“SEC”); Union Gas Limited (“Union”); and the Vulnerable Energy Consumers Coalition (“VECC”) (collectively, the “Parties”).
2. With a few exceptions, there is a broad consensus among the Parties that additional regulatory flexibility is required to facilitate the rationale expansion of the natural gas distribution system into regions of the Province that are not currently served.
3. The consensus view is that under the current regulatory regime, expansion projects that are economic are not proceeding because of limitations created by the current regulatory framework. In general, the Parties agree on some key aspects of the solution. This consensus is informative to the Board’s proposed framework.

4. Specifically, there is a consensus that changes to the EBO 188 framework should be permitted to:
 - (a) allow municipalities to commit to a voluntary tax rebate (and accounting for this rebate in the Board's methodology); and
 - (b) allow utilities to charge new customers a temporary expansion surcharge, for existing utilities, or stand-alone rates, for new entrants (and accounting for these incremental revenues in the Board's methodology).

5. Where the Parties differ is largely in respect of:
 - (a) whether or not existing natural gas ratepayers should pay a surcharge to subsidize the expansion project;
 - (b) whether the utilities proposing an expansion should accept incremental risk or demonstrate some other tangible financial commitment to the expansion project;
 - (c) whether the Board should take a more active role in competitive processes for municipal franchises; and
 - (d) what role greenhouse gases will play in the Board's framework.

6. These submissions are structured in two parts. First, the Southern Bruce municipalities address the areas of agreement among most (admittedly not all) of the Parties. Second, the Southern Bruce municipalities address the key areas of disagreement among the Parties in a manner that focuses on relevance to the Board's approved issues list.

B. AREAS OF AGREEMENT

1. The Incremental Tax Equivalent

7. The Parties broadly support the idea that municipalities should be permitted to rebate the property and pipe taxes applicable to an expansion project over a defined period of time, and that this rebate should be accounted for in the Board's economic assessment of the project (an "ITE").
8. In argument-in-chief, the Southern Bruce municipalities agreed with an ITE as part of a comprehensive solution to make expansion projects more viable, which also included a temporary expansion surcharge for new customers, a cross-subsidy from existing customers, the elimination of advanced reinforcement charges, and a demonstrable commitment by the utilities. Recognizing the diversity in submissions the Board has been asked to consider, this reply is intended to decouple the ITE from the remainder of the solution proposed by the Southern Bruce municipalities.
9. The Southern Bruce municipalities support a **voluntary** ITE, even if the Board does not accept all of the other elements of the Southern Bruce proposed solution. A voluntary ITE demonstrates a tangible financial commitment by the municipalities to help reduce the costs, and increase the likelihood of success, of an underlying expansion project.
10. What do we mean by a voluntary ITE? We mean that in the absence of a ratepayer funded cross-subsidy, the existence, terms and conditions of an ITE should be voluntary. It should be determined through arm's length negotiations between the utility and the municipality in consideration of the particular project and economics.
11. Contrary to the submissions of Board Staff, the ITE is a real and tangible concession that is being made by municipalities. Municipalities have a legal right, found in statute and regulation, to collect property and pipeline taxes to fund municipal operations. None of the municipalities in the Province of Ontario that are currently benefiting from access to natural gas service were required to rebate or forfeit the property and pipeline taxes that they are legally entitled to collect to support the development of the natural gas system.

These municipalities get to benefit from the economic advantages created by access to cheap natural gas and from incremental property and pipeline taxes.

12. By adopting a voluntary approach to the ITE, the Board would treat municipalities in proposed expansion territories fairly and consistently with the past treatment of municipalities that already benefit from the existing natural gas distribution system. A municipality may voluntarily rebate taxes, but it is not required to do so.
13. Subject to the one exception noted below, the Southern Bruce municipalities submit that the Board should not make an ITE **mandatory**. The municipalities have a legislative authority to collect property and pipeline taxes. This authority may be waived voluntarily by the municipalities through an ITE. However, it is not clear what legal basis the Board could use to require municipalities to rebate taxes they are otherwise legally entitled to collect.
14. There is one exception. If the Board approves access to a ratepayer funded cross-subsidy for the expansion project, then the Southern Bruce municipalities believe it would be reasonable for the Board to require a mandatory minimum ITE as a pre-requisite to access cross-subsidy funding. Southern Bruce submits that the length, or term, of a mandatory ITE should strike an appropriate balance between the ITE contributions made by the municipalities vs. the contributions being made by existing ratepayers via a cross-subsidy vs. the contributions being made by new expansion customers vs. the contributions being made by the utility.
15. Finally, the Parties also largely agree that any ITE should be directly accounted for in the Board's economic assessment methodology for new expansion projects. In this regard, the Southern Bruce municipalities agree with the submissions of LPMA that, since the ITE is a rebate of annual tax costs, that these amounts should be treated as revenue rather than as contributions in aid of construction.

2. A Temporary Expansion Surcharge (or Standalone Rates)

16. Many of the Parties also agree that the Board should allow for a departure from the principle of postage stamp ratemaking. Specifically, the Board should allow existing utilities to charge a temporary expansion surcharge (the “TES”) and allow new entrant utilities to charge stand-alone rates, to new expansion customers.
17. While Enbridge and Union have both proposed a specific TES charge, the submissions of LPMA illustrate how sensitive these calculations are to variations in underlying assumptions. The Southern Bruce communities support the recommendation of LPMA that the TES should be calculated on a project-by-project basis. This also benefits incumbent distributors, who can propose a TES that would mirror stand-alone rates to ensure they can effectively compete for expansion opportunities.
18. The rationale for the TES is a simple one. Customers that benefit from a proposed expansion project should be required to contribute a portion of that benefit to support the costs associated with building that expansion. The rationale is one of cost causality – a recurring theme the Board has heard throughout this proceeding.
19. In argument-in-chief, the Southern Bruce municipalities agreed with a TES, again as part of a comprehensive solution to make expansion projects more viable. While Southern Bruce agrees that expansion customers should contribute to the success of the expansion, the Southern Bruce municipalities also caution that the TES should not be set at such a high level that it would strip all of the economic benefits remaining associated with converting to natural gas.
20. If the Board approves a TES as part of its framework, it should also acknowledge that the TES does represent a departure from principle of postage stamp ratemaking. It will require expansion consumers to pay an expansion surcharge that will result in rates that are (potentially considerably) higher than the prices paid by other ratepayers in the Province of Ontario. This will put rural and remote areas of the Province at a further economic disadvantage.

21. Southern Bruce submits that like any other rate charged for natural gas distribution, the Board must ensure that the TES is “just and reasonable” and it must be consistent with the Board’s statutory objective to “protect the interests of consumers with respect to prices” (which, despite implied suggestions to the contrary, is not limited only to existing natural gas consumers, but must also include expansion consumers).
22. Caution is warranted in this regard. The rationale of cost causality that is used to justify the TES is inconsistent with the Board’s current rolling portfolio standard, which assesses a collective of projects to ensure they have a rolling PI above 1.0. If expansion customers must pay a TES for their expansion project, they should not also be solely responsible for subsidizing the costs of other expansion projects in the portfolio. This would result in the imposition of a higher TES in one community, which TES does not go to support the cost of their expansion project, but would instead go to support the costs of a different expansion project. This is not consistent with the principle of cost causality that is trumpeted as the justification for the TES, and would not result in just and reasonable rates for these expansion customers.
23. Southern Bruce is not opposed to allowing for subsidies to support expansion projects. However, if the Board believes that a subsidy is merited to ensure a portfolio of projects has a PI above 1.0, then that subsidy should be charged to all of the ratepayers in the Province of Ontario, not just expansion consumers that are already being asked to contribute an exceptional TES.

C. AREAS OF DISAGREEMENT

24. This section of the Southern Bruce reply addresses areas of disagreement between the Parties. For ease of reference, this section of the reply has been organized in accordance with the Board's approved issues list.

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

25. Southern Bruce agrees with Board Staff that the proposed definition of community should not be applied to expand into subdivisions where there is proximate access to natural gas. Southern Bruce disagrees with LPMA in this regard. In Southern Bruce's submission, this proceeding is intended to create a framework that would facilitate access to natural gas to entire communities that do not currently have access to natural gas. It is not intended to subsidize property developers who might otherwise have to pay a contribution in aid of construction to connect their new subdivision developments that have proximate access to the existing natural gas system.

26. Southern Bruce agrees with Anwaatin that First Nation communities should be included among communities in the context of this proceeding. However, Southern Bruce does not agree that First Nations should be exempted from the objective standard that the Board uses to limit the scope of what constitutes a community, such as a specific size threshold (e.g. a minimum of 50 potential customers). The uniform application of an objective standard would not perpetuate an 'out of sight, out of mind' paradigm. Rather, it would apply the same reasoned test to all communities, including First Nations, and other rural and remote communities.

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?

27. Southern Bruce agrees with Board Staff, VECC, SEC, among others, that the Board has the legal authority to establish a framework whereby customers of one utility subsidize the expansion undertaken by another distributor into communities that do not have natural gas service, such as by utilizing an expansion reserve.

28. It is worth noting that each of the Southern Bruce, Board Staff, VECC and SEC submissions include a comprehensive legal analysis. Each take a different approach to the question, but draw similar findings from the relevant case law. This is not a coincidence. It is because these submissions represent a correct interpretation of the Board's broad authority to regulate the energy sector in Ontario.
29. Southern Bruce does not agree with the assertions of IGUA and others that the Board does not have jurisdiction to order a cross subsidy. In some instances, an argument that the Board does not have jurisdiction amounts to a mere assertion. While a Party may believe that the Board should not approve a cross subsidy for a number of policy reasons, it is an error in law to conclude that, simply because you do not think a subsidy is a good idea, the Board therefore does not have jurisdiction to do it. These submissions fail to properly account for the known case law. They also fail to account for each of the existing cross subsidies which the OEB has already approved, including subsidies between customers arising from the use of postage stamp rates, between rural and urban customers with rural and remote electricity rate protection (RRRP),¹ between customers of different transmitters with the Uniform Transmission Rate (UTR),² between higher and lower income customers with the Low-Income Energy Assistance Program (LEAP)³ and the Ontario Electricity Support Program (OESP). No Party has suggested that the Board is not acting within its jurisdiction in ordering each of these existing cross subsidies.

a. An expansion reserve subsidy does not constitute an illegal tax.

30. CPA argues vigorously that any cross-subsidy from existing customers to benefit new customers would constitute an illegal tax. Union disagrees with CPA's assertion in the general sense, but then argues that any cross-subsidy that comes from the customers of one utility to support expansions undertaken by another utility would constitute an illegal tax.

¹ Exhibit R13, Bacon Report.

² Exhibit R13, Todd Report, at pg. 16.

³ Exhibit S13 – Exhibit R13.South Bruce. Board Staff.4.

31. We have carefully considered the case law on this topic, and have concluded that a cross-subsidy would be found to be a valid regulatory charge, not an illegal tax.

32. The Supreme Court of Canada explains in *SNEAA c. Canada (Procureur général)*, [2008] 3 S.C.R. 511 at para. 72 that:

"This question of the validity of imposing regulatory charges has come before this Court on several occasions. In its decisions, the Court has accepted the use of regulatory charges to finance government programs and has developed tests for identifying such special levies. There are two steps in the identification process. First, the existence of a regulatory scheme must be established. According to the analytical approach adopted in *Westbank First Nation v. British Columbia Hydro & Power Authority*, [1999] 3 S.C.R. 134 (S.C.C.), there must be (1) a complete and detailed code of regulation, (2) a regulatory purpose of influencing specific behaviour, (3) the existence of actual or properly estimated costs of the regulation and (4) a relationship between the regulation and the person who either benefits from it or made it necessary (para. 44). Rothstein J. recently reiterated these criteria in *620 Connaught Ltd. v. Canada (Attorney General)*, [2008] 1 S.C.R. 131, 2008 SCC 7 (S.C.C.), at paras. 25-26, although he reminded us that the list is not exhaustive."

33. Once the court finds that a regulatory scheme exists, it must determine whether there is a relationship between that scheme and the charge (*Connaught*, at para. 27). Revenue collection must be directly related to the regulation and would, in itself, have a regulatory purpose of influencing behaviour (see *Westbank*, at para. 44). The characterization of a levy as a regulatory charge depends above all else on whether the collected amounts or a substantial part thereof are allocated to the regulated activity.

34. Taking all of this into account, an expansion surcharge is most accurately characterized as a valid regulatory charge, not an illegal tax. This is why none of the other subsidies that have been authorized by the OEB have been challenged as an illegal tax. This includes the UTR, LEAP, the OESP, RRRP and postage stamps rates. Like an expansion surcharge, each of these charges constitute a valid regulatory charge, not an illegal tax.

b. The Board does have jurisdiction to approve an expansion reserve

35. Enbridge and Union argue that requiring customers of one utility to subsidize the expansion undertaken by another into communities that do not have natural gas service is outside of the Board's jurisdiction. There are two principal submissions made to support this conclusion. Southern Bruce will reply to each below.
36. First, Union has argued that by granting the Board with the explicit jurisdiction to provide for rural and remote electricity rate protection under Section 79 of the *Ontario Energy Board Act, 1998* (the "Act"), this implicitly excludes any intent to confer on the Board jurisdiction to do the same for natural gas customers. Union's argument is an application of the maxim of implied exclusion, which is explained at pgs. 11-12 of Board Staff's submissions.
37. As correctly explained by Board Staff, implied exclusion is a guiding principle that may be used by the OEB to interpret its legal powers, however, it is not the only tool the OEB should use in assessing the extent of its power.
38. In this regard, additional caution is warranted when considering Union's argument. The majority (2:1) decision of the Ontario Energy Board in EB-2006-0034 applied the maxim of implied exclusion to the same Section 79 of the Act to find that it implicitly excluded any intent to confer on the Board jurisdiction to undertake a low income program. This reasoning was subsequently overturned by the majority of the Divisional Court at paragraphs 30-32 of Advocacy Centre.
39. According to the Divisional Court, Section 79 was introduced in 1999 when the authority to regulate rates for electricity distributors, for the first time in Ontario's history, was transferred to the Board. It was introduced into the Act to expressly indicate to the Board that this significant historical policy to levelize rates between rural and remote and other customers must continue. It does not serve to otherwise limit the Board's broad authority to set just and reasonable rates, including the jurisdiction to permit inter-utility cross subsidies.

40. This is perhaps best illustrated by the Ontario UTR example, which represents an inter-utility cross subsidy that is not explicitly mandated in the Act. Rather, the UTR is created pursuant to the same ratemaking power as exists for natural gas distribution and transmission. The UTR makes it clear that the Board does have jurisdiction to permit an inter-utility cross subsidy. The UTR is an exercise of that jurisdiction and is directly responsive to issue 2.
41. Second, Union, BOMA and others argue that an expansion reserve would be contrary to the “just and reasonable” standard. The argument is that rates would not be based upon a utilities’ underlying costs to serve its customers, that benefits would no longer follow costs, and that it would violate the standalone principle of ratemaking. In effect, the argument implies that the Board’s hands are tied by the just and reasonable standard. According to Union and Enbridge, if the Board wants to subsidize community expansions, it’s only choice is to adopt the intra-utility approach proposed by Union and Enbridge.
42. If the Board parses the Union argument, it will realize that a very similar argument was made, and ultimately rejected, by the Supreme Court of Canada in *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, [2015] 2 S.C.R. 147 (“OPG”). In that case, counsel for Ontario Power Generation argued that the Board was bound by the “just and reasonable” standard to apply a specific test, in that case the prudence test. In this case, counsel for Union has argued that the Board is bound by the “just and reasonable standard” to approve a specific subsidy mechanism, in this case an intra-utility rather than inter-utility subsidy.
43. The Supreme Court found in OPG that there is no support in the statutory scheme for the notion that the Board should be required as a matter of law, under the Act to apply a particular test. Rather, the Supreme Court determined that where a statute requires only that the regulator set “just and reasonable” payments, the regulator may make use of a variety of analytical tools in assessing the justness and reasonableness of a utility’s rates. This is particularly so where, as here, the regulator has been given express discretion over

the methodology to be used in setting payment amounts and to impose such conditions as it considers proper, which conditions may be general or particular in application.

44. One such condition might be an obligation to make payments into a province-wide expansion reserve. This, in-turn, would form a part of the utility's cost of doing business and would be included in rates in a manner similar to the payment of taxes or charitable donations.
45. So long as the global amount of return to the utility remains achievable, which it would since the contributions to the expansion reserve would be recoverable through rates, the Board otherwise has broad discretion to adopt any method and technique it considers appropriate in determining just and reasonable rates. This was explained by the Divisional Court which determined at paragraph 59 of *Advocacy Centre* that "so long as the global amount of return to the utility based upon a "cost of service" analysis is achievable, then the rates/prices (and the methods and techniques to determine those rates/prices) to generate that global amount is a matter for the Board's discretion in its ultimate goal and responsibility of approving and fixing "just and reasonable rates.""
46. Since the expansion reserve could be used to fund expansion proposals from Union, Enbridge or another new entrant - there cannot be said to be a direct cross subsidy from one utility's ratepayers to another. Rather, and much like the Ontario rural and remote electricity rate protection model and the CRTC telecommunications model, any utility could benefit from the expansion fund based on the application of reasonable criteria.

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?

47. CPA, OGA, IGUA, CCC, EP, LPMA, BOMA and other intervenors opposed the imposition of a surcharge on their constituency to fund new expansion projects. As representatives of existing consumers or competitors to natural gas utilities, this is not surprising. Their constituents are either (i) already reaping the benefits of access to low cost natural gas services, or (ii) are benefiting from the lack of choice created due to the lack of access to natural gas across large parts of the province.

48. According to these Parties, to constitute a “rational expansion” a project must not involve a subsidy. These submissions rely on the assumption that the Board is solely an economic regulator. They imply that other policies do not and should not play a role in the Board’s rate setting process.
49. Southern Bruce respectfully disagrees.
50. The Board’s objective to “protect the interests of consumers with respect to prices” is not limited only to existing natural gas consumers. This objective must also be interpreted to include consideration for consumers that will attach to new community expansion projects.
51. Many of the Parties are proposing a departure from principle of postage stamp ratemaking, by requiring expansion consumers to pay a TES that will result in rates that are higher than the prices paid by other ratepayers in the Province of Ontario. This will put rural and remote areas of the Province at a further economic disadvantage.
52. A subsidy would be justified to protect the interests of expansion consumers, to ensure that the rates they are asked to pay continue to be both just and reasonable, and that any TES does not rise to a level that it diminishes the financial incentive to convert to natural gas.
53. As was explained by the Divisional Court, at paragraph 31 of Advocacy Centre, an expansion reserve program, much like RRRP, can serve to mitigate the effect of the cost differential related to geography and remains consistent with a rate making process based upon cost causality.
54. Subsidies are a regular feature of the Board’s current approach to “just and reasonable rates” and “rational expansions”.
55. The existing EBO 188 policy permits a limited form of cross-subsidy as part of the rolling portfolio approach. It is unclear why a cross-subsidy from one group of expansion customers to another group of expansion customers is acceptable, while a cross-subsidy from existing customers to new expansion customers is not. None of the

Parties have explained how the customers of an expansion project with a PI above 1.0 would stand to benefit any more than existing customers would by subsidizing a different expansion project with a PI of below 1.0. The Board's rolling portfolio approach unfairly prejudices customers of an expansion project with a PI above 1.0. If a limited form of cross-subsidy is to be permitted, then it should be borne by all existing customers, not just other expansion customers.

56. Ontario's UTR is another good example of an inter-utility cross-subsidy that the Board has adopted to address issues related to cost differentials caused by geography.⁴ Take the Five Nations Energy Inc. radial transmission extension as an example. This transmission line draws from the Hydro One Networks Inc. grid to deliver energy to two remote First Nation communities. This transmission line does not deliver energy back into the Hydro One grid, and it cannot be credibly suggested that this radial extension serves to benefit any ratepayers in the Province of Ontario other than those directly serviced by the radial extension. Despite this, the costs of service incurred by Five Nations Energy Inc. are incorporated into Ontario's UTR and are borne by all ratepayers across the Province.
57. Board Staff relies on the colloquial wisdom that the UTR is justified because "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." Board Staff has not cited any evidence to prove this assertion. If Board Staff had led evidence, Southern Bruce would have asked how exactly customers connected to Hydro One's transmission system in Dryden or Kenora benefit from the costs associated with the radial transmission extension that is owned and operated by Five Nations Energy Inc. The answer is simple: they don't.
58. The Board should set aside colloquial wisdom in light of clear facts. As it exists, the UTR can be justified only as a mechanism to levelize the rates paid by consumers for transmission services across the entire Province despite the cost differentials caused by geography.

⁴ Exhibit R13, Todd Report, at pg. 16.

59. An expansion reserve would be used to achieve a similar objective for natural gas distribution as the UTR does for electricity transmission, and RRRP does for electricity distribution.
60. The benefits derived by the community from a public utility services, such as natural gas distribution, are by no means limited to those persons who pay for the service, either directly as consumers or indirectly as purchasers of products made by aid of the service. On the contrary, encouragement of use of the public utility service is in the interest of the entire Province of Ontario because the entire Province will benefit.
61. The Southern Bruce communities provide an example of the diffusion of benefits. Southern Bruce is home to the Bruce nuclear generating station, which supplies low cost power to much of the Province. By facilitating access to natural gas distribution services in Southern Bruce, the Board will help to reduce the operating costs at Bruce Power, which in-turn will result in lower cost electricity production to the benefit of all Ontarians.
62. Southern Bruce is also a prime agricultural area, and is home to an active agricultural industry which produces the produce and foods which in-turn feed our large and populated urban centres. By facilitating access to natural gas distribution services in Southern Bruce, the Board will help to reduce the operating costs as these farms and agricultural industries, which in-turn will result in lower cost food to the benefit of all Ontarians.
63. Given this, Southern Bruce submits that it is not appropriate to place the financial burden of expanding natural gas distribution services into the Southern Bruce communities solely on the residents of those communities when the entire Province will benefit from the provision of those services.
64. Board Staff also argues that the creation of an expansion fund would be a significant administrative undertaking with additional financial costs. While there certainly would be one-time upfront costs in establishing any new mechanism, the ongoing costs would be *de minimis*. This is illustrated in the evidence of Mr. Bruce Bacon regarding the very

low administrative burden associated with the RRRP approach in electricity (one person-month per year to administer the program across the entire province of Ontario).⁵ It is also illustrated in the evidence of Mr. Hariton regarding the relatively modest ongoing administrative costs associated with the CRTC's access fund (which costs \$800,000 per year for a \$150,000,000 fund – or 0.53% per year),⁶ which is consistent with the evidence of Mr. Todd as well.⁷

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

65. Southern Bruce submits that the Board should reject the proposal by Anwaatin to apply a super-priority to expanding natural gas distribution services to energy-poor First Nations communities, at the expense of other rural and remote communities.⁸ First Nation communities face similar, albeit not identical, socio-economic challenges as other rural and remote communities arising from the lack of access to low cost heat energy through natural gas. In Southern Bruce, the lack of access to low cost natural gas heating has:

- (a) put local businesses at an economic disadvantage, which has resulted in closures such as Paisely Brick and Tile;⁹
- (b) discouraged new residents from moving into these areas due to the high costs of heating, estimated to exceed the costs of gas heating by \$1,000-\$2,000 per year;¹⁰ and
- (c) caused financial hardship for low income consumers, and the social services agencies that support them.¹¹

The evidence is that rural and remote communities, not just First Nations communities, experience “energy poverty”. Given this, Southern Bruce submits that First Nation

⁵ Tr. Vol. 3 dated May 9, 2015 at pg. 260 at lines 6-16.

⁶ Tr. Vol. 4 dated May 10, 2015 at pg. 119 at lines 2-22.

⁷ Tr. Vol 3 dated May 9, 2015 at pg. 260 at line 17 to pg. 261 at line 8.

⁸ Anwaatin Submissions at para. 26.

⁹ Tr. Vol. 3 dated May 9, 2016, at pg. 145, line 19 to pg. 145 line 7, pg. 147, lines 7-21.

¹⁰ Tr. Vol. 3 dated May 9, 2016 at pg. 145, lines 8-26.

¹¹ Tr. Vol. 3 dated May 9, 2016 at pg. 143, line 27 – pg. 146, line 13; pg. 148, line 5-17; pg. 149, line 26-pg. 150, line 12.

communities should be treated in a fair and consistent manner together with other rural and remote communities, and vice-versa.

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?

66. Southern Bruce submits that the Board should reject the proposal by Board Staff to maintain the rolling project portfolio, but with a portfolio minimum PI of 1.0 and an individual community expansion project threshold reduced to 0.7 (inclusive of the ITE and TES).
67. The rolling project portfolio makes no sense when expansion customers are being asked to pay a TES to fund their expansion project, and municipalities are being asked to fund an ITE to facilitate their expansion project. The Southern Bruce municipalities are willing to waive their legal right to property and pipe tax by paying an ITE to fund the Southern Bruce expansion project only. Southern Bruce customers might be willing to depart from the principle of postage stamp rates and pay a TES, but it would be to fund the Southern Bruce expansion project only.
68. The TES and ITE would not work as intended if they were used not only to bring a specific project PI closer to 1.0, but they were also used to fund an expansion project for some other community and municipality that is part of a rolling project portfolio. The rationale used to justify both the ITE and TES would no longer hold. Municipalities would be less willing to fund an ITE. And customers would be less willing to pay a TES.
69. It is not fair to charge the customers of other expansion projects that are already being asked to contribute a TES, over and above standard rates, to also be solely responsible for subsidizing other new expansion projects. It is also not fair to the municipalities that voluntarily agree to an ITE, only to have their tax rebate used to subsidize an expansion project that would serve a different municipality.
70. If the Board wants to provide a cross-subsidy to facilitate new expansion projects, then the subsidy should be funded by an expansion surcharge that is paid by all ratepayers. This is the only approach that results in “just and reasonable” rates for all consumers. It

is also the only approach that protects the interests of expansion customers in respect of price.

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.

71. No additional submissions.

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?

72. No additional submissions.

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?

73. No additional submissions.

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?

74. No additional submissions.

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

75. No additional submissions.

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?

76. See the TES discussion in areas of agreement above.

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

77. No additional submissions.

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?

78. No additional submissions.

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?

79. Southern Bruce submits that the Board should reject the proposal of counsel to Anwaatin that the Board should require that municipalities to consult with First Nations prior to making a decision to issue a Municipal Franchise Agreement. Anwaatin has failed to identify what specific legal interests a First Nation would have prior the issuance of a Municipal Franchise Agreement pursuant to the *Municipal Franchises Act*, given that the proposed project would not yet be fully scoped or understood and thus the impacts on the First Nation would not yet be known. Southern Bruce agrees with the analysis of Board Staff, the duty to consult is not triggered by a decision to issue a Municipal Franchise Agreement and a legal obligation to consult should not be imposed.

80. This is not to say that consultations with First Nations are not important. The Southern Bruce communities are already actively undertaking consultations without Board intervention. The Southern Bruce business case for the gas expansion project clearly recommends that the municipalities should continue their stakeholdering activities with First Nations and Metis communities as the project details become known.¹² Mayor Eadie also confirmed under examination that consultations with First Nations is now standard procedure for any projects undertaken in the Southern Bruce municipalities.¹³

81. Similarly, Southern Bruce submits that the Board should reject the proposal of counsel to Greenfield that the Board should require (among other things) that municipalities to consult with major customers prior to granting a Municipal Franchise Agreement. Major industrial customers, like Greenfield, which accounts for roughly half of the forecast demand in the Kincardine area, have sufficient sophistication and leverage to ensure their involvement in these processes without the need for regulatory oversight. This is best

¹² Exhibit R13, Municipalities Report, at Appendix C, pg. 6.

¹³ Tr. Vol. 3 dated May 9, 2016 at pg. 169, lines 12-22.

illustrated by the fact that Greenfield is the only expansion customer that is actively represented in this OEB proceeding. Greenfield has confirmed that it has secured a supply of compressed natural gas from Mount Forest to serve their Tiverton plant, so Greenfield has a viable alternative against which to assess any new proposal.¹⁴ In addition, Mayor Eadie confirmed that Greenfield was actively consulted by the municipalities starting as early as 2011 and continuing well into 2016.¹⁵ This was further confirmed by Mr. Creighton during in-chief,¹⁶ cross-examination¹⁷ and in response to Undertaking J4.5. Given this, it is not clear why the Board should require consultations with one class of customer at the expense of other classes of customers.

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)

82. Southern Bruce agrees with Board Staff that the municipalities are best positioned to host a competitive procurement process and to select a preferred proponent.
83. Southern Bruce also welcomes the helpful recommendations of Board Staff to have the OEB: (i) pre-qualify a pool potential natural gas distributors with the requisite financial capabilities and technical experience and expertise to more readily facilitate future competitive procurements; and (ii) to provide guidance on the information that pre-qualified proponents should include in the RFI to the municipalities.
84. However, these helpful recommendations should not undermine competitive processes that have already been completed, such as the Southern Bruce RFI process. With the assistance of skilled advisors (Elenchus, Dr. Murphy, Mr. Bacon and BLG), the evidence is that the Southern Bruce municipalities considered financial capabilities and technical experience and expertise of proponents as well as much of other minimum information identified by Board Staff.

¹⁴ Tr. Vol. 4 at pg. 129, line 24 to line 28.

¹⁵ Tr. Vol. 3 at pg. 269, line 3 to pg. 271, line 10.

¹⁶ Tr. Vol. 4 at pg. 132, lines 25 to pg. 133, line 2.

¹⁷ Tr. Vol. 4 at pg. 148, line 7 to pg. 150, line 1.

85. Southern Bruce also does not agree with Northern Cross, Greenfield and other unsuccessful bidders and unhappy third parties in the Southern Bruce RFI that the Board should conduct the competitive procurement process itself or the Board should impose mandatory requirements on a competitive procurement. These parties are looking for the Board to second guess or “re-do” the competitive RFI process undertaken by Southern Bruce, largely because they are not happy with the outcome. Southern Bruce has three principal submissions in reply. The first submission is procedural in nature, and the latter two are limited to matters of relevance to the Board’s framework.
86. First, in respect of the Northern Cross submissions, Southern Bruce objects to the introduction of new evidence in its submissions, specifically the powerpoint presentation included at Attachment 2 of the Northern Cross submissions. Northern Cross had an opportunity to file evidence earlier in this proceeding. Had it done so it would have been required to put forth a witness to be questioned on the evidence. Parties likely would have had questions (for example, pages 5-8 of the presentation are titled “What has Changed Since NCE’s January 14th and April 15th Presentations?”, which implies a reasonable line of questioning to better understand these prior presentations). Northern Cross should not be allowed to skirt the discovery process. Southern Bruce submits that this new evidence should be stricken from the record.
87. Second, the Southern Bruce municipalities question whether the Board has the jurisdiction to undertake a competitive procurement process for new gas franchises or to impose mandatory requirements on municipalities that are running these processes. Unlike the east-west tie designation proceeding, the Board does not have a directive from the Minister of Energy asking it to initiate a competitive procurement. The jurisdiction cannot be found within the Board’s ratemaking function. And the jurisdiction cannot be found within the *Municipal Franchises Act*, where the Board has an approval function for municipal franchise agreements, however there would be no specific franchise agreement to approve.
88. Third, the Board’s public hearing process is not well suited to hold a competitive procurement. The Board is bound to comply with legal requirements deriving from

administrative law principles, which at times are not consistent with procurement law principles and practices, including the law applicable to competitive tenders and broader public sector procurements. If the Board holds a competitive procurement, it is bound by a public process (bids could not be confidential) and the procedural rights of parties to be heard and to a fair discovery process. This greatly complicates the assessment of what are effectively stand-alone proposals. Admittedly, the Board successfully managed similar complications during the east-west tie designation proceeding, however the process was lengthy, complicated, and costly. Proponents undertook these costs because the potential benefit was great. And the Board accepted the process because the costs of the new infrastructure was so high that the benefits associated with the process greatly outweighed the costs. The same likely cannot be said for small natural gas expansion projects.

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?

89. Southern Bruce has considered the submissions of Board Staff on this issue, and is in agreement with those submissions.

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?

90. Southern Bruce has considered the submissions of Board Staff on this issue, and is in agreement with those submissions.

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

91. No additional submissions.

D. CONCLUSIONS

92. Southern Bruce would like to conclude by once again thanking the Board for commencing this application on its own motion to examine what options may exist to facilitate connecting more communities to natural gas.
93. Southern Bruce has argued, and may of the Parties agree, that additional regulatory flexibility is required to realistically facilitate the connection of more communities to natural gas in Ontario.
94. Where the Parties largely disagree is on the particular mechanisms that will be involved. Southern Bruce submits that there is no silver bullet to this problem. Rather, the Board would be best served by adopting a balanced approach which combines:
- (a) A voluntary rebate of the incremental pipeline and property taxes that would otherwise be collected by the municipalities;
 - (b) An exemption to the application of the advanced reinforcement charges for community expansion projects;
 - (c) Allowing for a temporary expansion surcharge or higher tariff to be paid by all new expansion customers (including industrial customers) that stand to benefit from the expansion;
 - (d) Eliminating the rolling portfolio approach for expansion projects (which does not result in “just and reasonable rates” for certain expansion customers when combined with a temporary expansion surcharge and incremental tax rebate);
 - (e) Allowing for a modest cross-subsidy from all existing ratepayers to support new expansion projects without causing undue rate impacts on any one group of customers; and
 - (f) Requiring utilities to undertake some risks or make some other financial contribution to incent the success of the project.

95. Finally, the Board should encourage, but not require, municipalities to hold competitive procurement processes prior to issuing franchise agreements to facilitate the introduction of new entrants to provide service to communities that do not have access to natural gas. Specifically, the Board can:

- (a) Pre-qualify a group of potential proponents on technical and financial capabilities;
and
- (b) Providing guidance to potential proponents on the types of information they should include in their proposals.

All of which is respectfully submitted this 11th day of July, 2016.

Original signed by J. Mark Rodger

J. Mark Rodger

Original signed by John A.D. Vellone

John A.D. Vellone

Counsel to the Southern Bruce Municipalities.

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