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Delivered by Email and RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor, Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: EB-2016-0004: IGUA Letter dated July 19, 2016

We are writing in response to a letter filed by IGUA on July 19, 2016 “commenting” on the reply submissions of Southern Bruce (the “**Letter**”).

Procedural Concerns

The Letter constitutes an improper reply to the Reply Submissions of Southern Bruce, in a manner that is contrary to two-round submission process ordered by the Board in Procedural Order No. 3. Using the Letter, IGUA is attempting to make a third round of submissions while all other parties in EB-2016-0004 have been limited to two. For this reason, Southern Bruce submits that the Board should reject Letter, strike it from the record in this proceeding and disregard its contents.

Substantive Concerns

The subject of the “concern” which IGUA has raised in its Letter relates to arguments about the underlying policy rationale justifying Ontario’s Uniform Transmission Rate (“UTR”) structure.

The Southern Bruce communities retained Mr. John Todd of Elenchus Research Associates Inc. who, acting as an independent expert, identified the UTR in his report as “[a]nother example of rates that embed implicit cross-subsidies as a means of increasing equity among customers, reflecting the policy perspective that increased rate equity is in the public interest is the approach to setting transmission rates in Ontario.”¹

¹ Exhibit R13, Todd Report at pg. 16 (Section 6).
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In response to an interrogatory from IGUA, Mr. Todd is careful to state that he is not aware of the explicit policy basis of the UTR. Rather, he postulates several possible rationales (emphasis added):

“Mr. Todd is not aware of the explicit policy basis of the UTR. It appears to be an accepted historical practice. Given that the rate is uniform, it implies that the policy could be either (i) that all Ontario users of the transmission system benefit to some degree from the integrated transmission system and (ii) that it is would be inequitable or impractical to charge different categories of customers in Ontario different rates based on benefits received or allocated costs. Other jurisdictions have adopted different approaches to establishing transmission rates.”²

There is no conclusive evidence on the record stating the underlying policy basis for the UTR. IGUA did not sponsor evidence on this topic. Nor did Board Staff.

Southern Bruce’s reply submissions were intended to draw the Board’s attention to Board Staff’s assertion of a conclusion about the policy rationale for the UTR, despite this lack of conclusive evidence on this topic.

Southern Bruce raised in argument credible questions about Board Staff’s conclusion by referencing the inclusion of the Five Nations Energy Inc. radial transmission line in the UTR. No one is disputing that the Five Nations radial transmission line is included within in the UTR. This was referenced by both Board Staff in their submissions and by Mr. Todd in his report.

The real issue is how does the inclusion of the Five Nations radial transmission line in the UTR align with the suggestion made by Board Staff that all transmission users benefit from the assets included in the UTR. In the Southern Bruce submissions, it does not.

Rather, Southern Bruce argued in reply that the inclusion of the Five Nations radial transmission line in the UTR is better explained as mechanism to address rate inequities and to otherwise support a meaningful First Nation led initiative to serve two remote First Nation communities.

In this context, IGUA has filed its Letter in an attempt to bolster Board Staff submissions by citing additional evidence (including the interrogatory response cited above and other material³) in an attempt to support Board Staff’s conclusions. If IGUA had submissions in support of Board Staff’s conclusions about the UTR, it is unclear why they did not address those submissions in reply in a manner similar to Southern Bruce rather than waiting and filing a letter after the fact.

² ES13.South.Bruce.IGUA.7.

³ IGUA even references a 2008 London Economics Report that was not filed on the record in EB-2016-0004. In this report London Economics references the “positive externalities” associated with transmission infrastructure in a general way, in a manner that is similar to how the experts in this EB-2016-0004 spoke in general terms about the positive externalities associated with natural gas expansion projects.

In the same Letter, IGUA argues that the Board should ignore the Southern Bruce reply submissions on the basis of “lack of evidence.” In response, it is sufficient to note that the Board is responsible for setting just and reasonable transmission rates in Ontario. The Board both created and routinely sets the UTR. The Board is in the best position to both understand the UTR and to articulate the policy rationale supporting the UTR.

Yours truly,

BORDEN LADNER GERVAIS LLP

Original signed by J. Mark Rodger

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cc: Michael Millar, OEB Counsel
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Mr. John Todd
Mr. Bruce Bacon
All Intervenors (EB-2016-0004)