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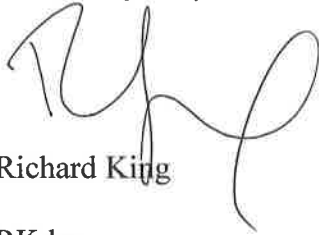
Attention: Ms Kirsten Walli  
Board Secretary

Dear Sirs/Mesdames:

**EB-2018-0263 – EPCOR Natural Gas Limited Partnership  
Leave to Construct – Southern Bruce Municipalities**

Please find attached the Reply Submissions of EPCOR Natural Gas Limited Partnership in the above-noted matter. It is being served on all parties to this proceeding by way of email, and will be filed on RESS today.

Yours very truly,



Richard King

RK:ks  
Enclosure

c: All parties to EB-2018-0263 (via email)

## ONTARIO ENERGY BOARD

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Sched. B), as amended (the “**OEB Act**”) and the *Municipal Franchises Act*, R.S.O. 1990, c.M.55, as amended (the “**MF Act**”);

**AND IN THE MATTER OF** an application by EPCOR Natural Gas Limited Partnership under section 90 of the OEB Act for an order or orders granting leave to construct natural gas distribution pipelines and ancillary facilities to serve the Municipality of Arran-Elderslie, the Municipality of Kincardine and the Township of Huron-Kinloss;

**AND IN THE MATTER OF** an application by EPCOR Natural Gas Limited Partnership for orders approving the terms and conditions upon which, and the period for which, the Corporation of the County of Bruce, the Corporation of the County of Grey, the Corporation of the Municipality of Arran-Elderslie, the Corporation of the Municipality of Brockton, the Corporation of the Municipality of Kincardine, the Corporation of the Municipality of West Grey, the Corporation of the Township of Chatsworth and the Corporation of the Township of Huron-Kinloss each, by by-law, grant the right to EPCOR Natural Gas Limited Partnership to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the County of Bruce, the County of Grey, the Municipality of Arran-Elderslie, the Municipality of Brockton, the Municipality of Kincardine, the Municipality of West Grey, the Township of Chatsworth and the Township of Huron-Kinloss;

**AND IN THE MATTER OF** an application by EPCOR Natural Gas Limited Partnership under section 8 of the *Municipal Franchises Act* for an order or orders granting a Certificate of Public Convenience and Necessity to EPCOR Natural Gas Limited Partnership for the construction of works and the right to extend and add works in the County of Bruce, the County of Grey, the Municipality of Brockton, the Municipality of West Grey and the Township of Chatsworth;

**AND IN THE MATTER OF** an application by EPCOR Natural Gas Limited Partnership for orders directing and declaring that the assent of the municipal electors of each of the Corporation of the County of Bruce, the Corporation of the County of Grey, the Corporation of the Municipality of Arran-Elderslie, the

Corporation of the Municipality of Brockton, the Corporation of the Municipality of Kincardine, the Corporation of the Municipality of West Grey, the Corporation of the Township of Chatsworth and the Corporation of the Township of Huron-Kinloss to the by-law is not necessary.

## REPLY SUBMISSIONS OF EPCOR NATURAL GAS LIMITED PARTNERSHIP

### A. Introduction

1. EPCOR Natural Gas Limited Partnership (“**EPCOR**”) makes these reply submissions in support of its application to the Ontario Energy Board (the “**Board**” or “**OEB**”) for:
  - a. an order granting leave to construct (“**LTC**”) 75 km of high pressure natural gas pipeline and 45 km of MDPE (medium-density polyethylene) natural gas pipeline, and ancillary facilities to serve the Municipality of Arran-Elderslie, the Municipality of Kincardine, and the Township of Huron-Kinloss (collectively, the “**Southern Bruce Municipalities**”), as described in the application and evidence in this proceeding (the “**Facilities**”);
  - b. an order approving the terms and conditions contained in the proposed municipal franchise agreements based on the OEB’s Model Franchise Agreement (each a “**Franchise Agreement**”) for the Southern Bruce Municipalities as well as for the County of Bruce, the County of Grey, the Municipality of Brockton, the Municipality of West Grey, and the Township of Chatsworth; and
  - c. an order or orders granting EPCOR certificates of public convenience and necessity (each a “**CPCN**” or “**Certificate**”) for the County of Bruce, the County of Grey, the Municipality of Brockton, the Municipality of West Grey and the Township of Chatsworth.

2. In this introductory Section of the reply submission, EPCOR will address five preliminary issues that arose during the course of this proceeding:
- a. clarification as to whether EPCOR is seeking LTC approval not only for the Facilities (i.e., the 75 km of high pressure pipeline and 45 km of MDPE pipeline), but also the 178 km of smaller distribution pipeline noted in the evidence (the “**Customer Connection Lines**”);
  - b. clarification as to whether EPCOR will include any capital cost overruns (associated with the construction of the Facilities or Customer Connection Lines) in its rebasing application for rates in year 11 and beyond;
  - c. clarification as to the content of, and procedure for approving, the proposed Franchise Agreements;
  - d. clarification as to the scope and nature of the further CPCNs required for the South Bruce project; and,
  - e. clarification as to whether EPCOR is seeking exemption from having to follow the “same legislated requirements as any other regulated utility”.<sup>1</sup>
3. **LTC Approval Sought:** In making these reply submissions, EPCOR notes that no party to this proceeding has objected to granting LTC approval, and a number of parties actively support the granting of leave as soon as possible, in order to provide supply to the unserved regions in South Bruce.
4. However, during the course of this proceeding, an issue arose as to whether EPCOR is seeking LTC approval not only for the Facilities (i.e., the 75 km of high pressure pipeline

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<sup>1</sup> Enbridge Submission, paragraph 25.

and 45 km of MDPE pipeline), but also the Customer Connection Lines. Whether or not the Customer Connection Lines are included in LTC approval has implications for the scope of the environmental report filed by EPCOR in support of this application.

5. EPCOR addresses this issue fully in Section C of this reply submission. EPCOR does not believe EPCOR requires Board approval for the Customer Connection Lines. However, EPCOR recognizes the uniqueness of this LTC application (i.e., expansion through the construction of an entirely greenfield system into a previously un-serviced region), and if the Board were to find that the Customer Connection Lines do require Board approval, EPCOR requests that the matter be dealt with by way of a condition to any LTC approval granted (but that any such condition not delay construction of the Facilities). This request is consistent with a Board Staff's revision (June 6, 2019) to its original submission, where they state at page 2:

EPCOR is required to update its ER to include the components of the Proposed Project that are not currently covered by the ER. EPCOR may not commence construction on the elements of the Proposed Project that are not covered by the current ER until the updated ER has been filed with the OEB and the OEB is satisfied there are no material concerns.

6. ***Cost Overruns and Rebasing in Year 11:*** A second issue that arose during submissions is whether EPCOR would seek to include any capital cost overruns associated with the Facilities or Customer Connection Lines in rate base at EPCOR's rebasing application for rates in years 11 and beyond. The issue is relevant to the Board's consideration of whether to require post-construction financial reporting by EPCOR as a condition to any LTC approval granted.
7. It is EPCOR's position that no such financial reporting should be required because any cost overruns are entirely irrelevant. In its June 3<sup>rd</sup> submission, Board staff had suggested that

such financial reporting was relevant because “there may be a substantial rate shock in year 11 if the project costs substantially exceed the estimated costs”.

8. The Industrial Gas Users Association (“**IGUA**”) requested, by way of a June 4<sup>th</sup> letter to the Board, clarification on this point, since IGUA had understood EPCOR’s evidence to be that any cost overruns were EPCOR’s risk and would not be visited upon ratepayers in the rebasing application for rates in years 11 onwards.
9. EPCOR can confirm that IGUA’s understanding is correct. EPCOR will not include any capital cost overruns associated with the Facilities or Customer Connection Lines in rate base at EPCOR’s rebasing application for rates in years 11 and beyond. This is consistent with EPCOR’s proposal in its Common Infrastructure Plan (“**CIP**”) submitted in EB-2016-0137/0138/0139), and the evidence provided in this proceeding.
10. ***CPCNs and Franchise Approvals:*** EPCOR is requesting approval of the Franchise Agreements with the Southern Bruce Municipalities<sup>2</sup>. Additionally, EPCOR is requesting approval for the Franchise Agreements and CPCNs for the County of Bruce, the County of Grey, the Municipality of Brockton, the Municipality of West Grey and the Township of Chatsworth, all of which are municipalities (both upper and lower-tier) through which EPCOR’s natural gas pipeline infrastructure will pass in order to provide service to the Southern Bruce Municipalities. Enbridge Gas Inc. (“**Enbridge**”) has provided comments and submissions regarding the content of the proposed Franchise Agreements and CPCNs. OEB Staff also provided comments and submissions regarding the proposed Franchise Agreements and CPCNs, including the submission that OEB approval for certain Franchise

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<sup>2</sup> EPCOR has already received CPCNs in respect of the Southern Bruce Municipalities.

Agreements (namely the “pass-through” Franchise Agreements) may not be necessary. Finally, Anwaatin provided comments regarding the proposed Franchise Agreements and the incorporation of certain aspects of the Official Plan of the County of Bruce. As discussed further in paragraph 69, EPCOR agrees with OEB Staff that all approvals necessary for EPCOR to serve the Southern Bruce Municipalities should be granted. With respect to the proposed Franchise Agreements, it is EPCOR’s preference that the terms remain as-is and that the Agreements not be sent back to the municipalities for a further (and redundant) round of approvals, however, EPCOR will defer to the OEB’s preferences and directions thereto. With respect to the proposed CPCNs, EPCOR will defer to the OEB’s preferences and directions regarding the need for CPCNs for upper tier municipalities and geographically-limited CPCNs (as suggested by EPCOR) or “functional” CPCNs (as suggested by OEB Staff) for the municipalities in which the proposed pipeline will only pass through. Finally, EPCOR disagrees with Anwaatin’s suggestion to modify the terms of the proposed Franchise Agreements on the basis that if the Board were to deal with such requests, they should be the subject of a generic proceeding regarding the OEB’s Model Franchise Agreement.

11. ***Regulatory Treatment of EPCOR:*** At both the beginning and end of its submission, Enbridge states that EPCOR should be required to follow the same legislated requirements as any other regulatory utility. The implication here is that EPCOR is asking for special treatment or relief that amounts to an exemption from the Board’s standard regulatory requirements. No other party in this proceeding makes this suggestion.
12. The basis for Enbridge’s suggestion appears to turn on the applicability of four requirements to EPCOR: (a) the economic analysis in EBO 188; (b) LTC approval for the



Customer Connection Lines; (c) inclusion of the Customer Connection Lines within the study area of the Environmental Report; and (d) post-construction financial reporting by EPCOR.

13. It is EPCOR's position that none of these items are applicable to the relief sought in this application; however, this is not because of any special treatment sought by, or to be afforded to, EPCOR. Rather, in the case of items (a) and (d), the competitive CIP process undertaken by the Board to select EPCOR (as the distributor in the South Bruce region) addressed the purpose of the economic analysis elements of EBO 188 (i.e., cross-subsidization) through other means (i.e., stand alone rates) which in turn negate the need for any post-construction financial reporting. In the case of items (b) and (c), EPCOR is following the Board's requirements and practice in distinguishing between the Facilities (i.e., the backbone of the South Bruce gas distribution system, which are typically assessed under the Board's *Environmental Guidelines*<sup>3</sup>) and the Customer Connection Facilities (which are typically built as of right under CPCNs, pursuant to the Board's environmental screening process).
14. EPCOR's submissions on these four issues are elaborated on in Section D (with respect to the applicability of EBO 188), Section C (with respect to LTC approval for the Customer Connection Lines), Section E (with respect to the inclusion of the Customer Connection Lines within the Environmental Report), and Section F (with respect to the suitability of post-construction financial reporting).

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<sup>3</sup> *Environmental Guidelines for the Location, Construction, and Operation of Hydrocarbon Pipelines in Ontario* (7<sup>th</sup> edition, 2016)(the "Environmental Guidelines").



15. EPCOR remains subject to the Board's entire regulatory regime applicable to all natural gas utilities, subject to those requirements or conventions that are excluded or rendered meaningless by virtue of the unique CIP process that underpins this South Bruce LTC application.
16. In addition to Enbridge's claims that EPCOR be given no special treatment, Enbridge raises two regulatory requirements in its submission for the Board to consider that, while legal requirements, are not typically addressed at all (and if so, only in passing) in LTC applications. Specifically, at paragraph 15 of its submission, Enbridge states that EPCOR has provided no evidence in this proceeding that it has a Pipeline Integrity Management Program (a requirement under the authority of the Technical Standards and Safety Authority) and an emergency response program backed by financial assurance (a requirement under the authority of the Ministry of Environment). Yet a quick perusal of Enbridge's most recent LTC applications<sup>4</sup> yields virtually no Enbridge evidence on these two issues in those proceedings. No explanation is provided by Enbridge as to why EPCOR should provide information about these matters in its LTC application but Enbridge need not do so. Nor does Enbridge reconcile its demands on these two issues with the underlying premise of its entire submission that EPCOR be held to the same regulatory requirements as other regulated utilities. EPCOR notes that no other party to this proceeding raised these issues – and consequently, Enbridge's arguments on these issues should be disregarded. EPCOR is subject to a variety of legal requirements in a number of different areas beyond

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<sup>4</sup> See EB-2018-0188 (Chatham-Kent Rural LTC), which provides no evidence on either a pipeline integrity management program or an emergency response plan. Also see EB-2018-0226 (Georgian Sands), which in passing mentions that the project assets will be transferred to Enbridge's pipeline integrity program (but does not provide any information about such program) and does not appear to provide any evidence on an emergency response program.

those that fall within the Board's LTC jurisdiction. EPCOR need not demonstrate compliance with each and every one of these in a LTC application.

**B. Project Need**

17. Only Board Staff addressed the issue of project need in its submission, agreeing with EPCOR that there is a need for the South Bruce project. No party to this proceeding has suggested that the project is not needed, and in fact, several parties have submitted that it clearly is.
18. EPCOR submits that project need has been adequately demonstrated in this proceeding on the grounds that:
  - a. The Southern Bruce region remains the largest area in southern Ontario currently without access to natural gas as a fuel source.
  - b. The Southern Bruce Municipalities have long expressed a desire to secure natural gas supply for their citizens and have made pursuing such supply a clear policy priority. The Southern Bruce Municipalities began their quest to bring supply to the region seven years ago. As demonstrated by the submission of the Southern Bruce Municipalities, they remain enthusiastically supportive of securing access to natural gas for their residents, institutions, farms and businesses and EPCOR's efforts related thereto.<sup>5</sup>

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<sup>5</sup> Joint Submission of the Southern Bruce Municipalities, June 3, 2019.

- c. The availability of natural gas supply in the region will increase energy options available to nearly 9,000 potential residential and business customers, which should result in lower energy costs.<sup>6</sup>
- d. In the commercial, industrial and agricultural business sectors, access to natural gas should lower operating costs and mitigate the competitive disadvantage of doing business in the region that results from lack of access to natural gas. The evidence provided in this proceeding includes a number of letters of support from large agricultural and industrial customers in the region.<sup>7</sup> EPCOR is continuing to negotiate supply to two major industrial customers and believes that parties will be able to resolve any outstanding issues.<sup>8</sup> Indeed, IGUA's submission is supportive of granting LTC approval despite these customers not having yet executed supply arrangements, and without requiring that such contracts be executed prior to commencement of construction.<sup>9</sup>
- e. The previous and current provincial government have sought to facilitate and encourage supply into un-serviced areas, and specifically the South Bruce region, commencing with: (i) the 2013 Long-Term Energy Plan, wherein the Ministry of Energy committed to work with gas distributors and municipalities to look at options to expand natural gas infrastructure to serve more communities in Ontario;

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<sup>6</sup> Application and Evidence, Exhibit A/3/1, paras. 6 to 8.

<sup>7</sup> OEB Staff Submission, June 3, 2019, pages 4 and 5.

<sup>8</sup> Response to OEB Staff Interrogatory 7(c).

<sup>9</sup> IGUA Submission, page 2.

and continuing through to (ii) the recent passage of O. Reg. 24/19 confirming EPCOR's eligibility for funding expansion into the South Bruce region.<sup>10</sup>

19. For all of these reasons, EPCOR submits that need for the South Bruce project has been established.

**C. Proposed Facilities and Alternatives**

20. EPCOR is proposing to construct the Facilities, which are comprised of:

- a. approximately 60 km of steel NPS 8 pipeline;
- b. approximately 15 km of steel NPS 6 pipeline; and
- c. approximately 45 km of MDPE NPS pipeline.

21. As noted in EPCOR's evidence, the Facilities "will be the backbone for service to multiple communities throughout Southern Bruce."<sup>11</sup>

22. Integral to the operation of the "backbone" Facilities to be constructed are several stations to modify system pressure and regulate flows:

- a. a pressure regulator and metering station at Dornoch on Grey Road 25 between Concession Road 1 and Concession Road 2, which will be the main supply line to the Southern Bruce system;
- b. a pressure regulating station at Chesley near the intersection of Bruce Road 19 and Side Road 30N to tie into the NPS 8 mainline and decrease the mainline pressure to serve the community of Chesley;

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<sup>10</sup> OEB Staff Submission, page 3.

<sup>11</sup> Exhibit A, Tab 5, Schedule 1, p.1, paragraph 2.

- c. a pressure regulating station at Paisley near the intersection of the Brant-Elderslie Road and Bruce Road 3, to tie into the NPS mainline and decrease mainline pressure to serve the community of Paisley;
  - d. a pressure regulating station at Tiverton near the intersection of Bruce Road 23 and Bruce Road 15, to tie into the NPS 6 mainline and decrease the mainline pressure to serve the community of Tiverton;
  - e. a pressure regulating station at Inverhuron near the intersection of Bruce Road 23 and Parkwood Road, to tie into the NPS 6 mainline and decrease the mainline pressure to serve the community of Inverhuron;
  - f. a pressure regulating station at Kincardine near the intersection of Bruce Road 23 and north of Kincardine Hospital, to tie in the terminus of the NPS 6 mainline and decrease pressure to serve the community of Kincardine; and
  - g. a pressure regulating and flow measurement station at the Bruce Energy Centre.
23. Connected to the Facilities will be the Customer Connection Lines, consisting of a combined 178 km of smaller pipeline, for the purpose of delivering gas supply to end-users. These Customer Connection Lines are different in character and purpose than the Facilities. They are smaller pipelines than the Facilities and will be constructed for the purpose of moving gas from the Facilities to customers that request gas service from EPCOR.
24. As noted above, one issue that has arisen in this proceeding is whether LTC approval is required for the Customer Connection Lines. In EPCOR's view, LTC approval is not required for several reasons set out below.

25. First, the 178 km of pipeline expected to comprise the Customer Connection Lines will consist of many smaller sections of pipeline, none of which individually would be longer than 20 km in length or meet any of the other statutory criteria to trigger a LTC application.
26. Second, as noted above, the Customer Connection Lines are different in character and purpose as compared to the Facilities. This includes a generally smaller pipe size and lower pressure, an inability to propose alternative routes (as only a singular route is normally available to service customers), use of rights-of-way that have generally already been disturbed for installation of other utilities, and are generally built out over time to service customers as they chose to access natural gas.
27. Third, it would be highly unusual for pipelines such as the Customer Connection Lines to be the subject of a LTC approval. Although the statutory regime does not distinguish between types of hydrocarbon pipelines when it comes to the requirement to seek LTC approval, typically (and as described below) utilities have applied for, and the Board has granted, LTC approval to “backbone” pipelines without inclusion of distribution portions of systems. Once constructed, the utility constructs distribution lines (built out over time) to connect customers off of the pipeline that required approval, but without seeking any LTC approval (assuming none of the LTC triggering criteria are met). The construction of those distribution lines is done as of right pursuant to CPCNs and franchise agreements in place. That should be the process followed here.
28. The only reason that this has been raised as an issue is that EPCOR (for the purposes of providing comprehensive information to the Board, the participants in this proceeding, and the residents of the South Bruce region) provided information about these smaller Customer Connection Lines. Normally, LTC applicants do not provide such information.

For example, in a recent LTC application by Union Gas Limited (the Chatham-Kent rural project, EB-2018-0188), Union sought LTC approval for 500 metres of NPS 12 and 13 km of NPS 8 natural gas pipeline to serve increasing demand for natural gas in the region. In its application, Enbridge explains that: “There will be some additional individual distribution pipeline and/or station facilities required to attach customers to the local distribution network. The additional facilities are typically smaller diameter plastic and steel pipelines that do not require a Leave-to-Construct (“LTC”) application.”<sup>12</sup> EPCOR does not know whether these customer lines will exceed 20 km (collectively) in length or \$2 million in construction cost, but it should not matter because the construction timing and configuration of these lines may vary, and it would be inappropriate to aggregate any customer lines for the purposes of assessing whether the LTC trigger criteria were met. The same is true of the Customer Connection Lines associated with the South Bruce project.

29. An additional example is the LTC application by Enbridge Gas Distribution Inc. (the Fenelon Falls Pipeline Project, EB-2017-0147) in which Enbridge sought LTC approval for 29 km of a combination of NPS 6 inch and NPS 4 inch pipeline in addition to 8 km of NPS 6 inch steel pipeline. In its application, Enbridge explains that: “Additionally, other infrastructure (distribution mains, services and regulator stations) will be required to provide gas distribution service to the Communities. This infrastructure is not part of this Application but has been included in the economic feasibility calculation for completeness.”<sup>13</sup> Enbridge’s economic feasibility in that application included a capital cost for Distribution Mains of \$10,499,405, in addition to a capital cost of \$1,544,832 for Future

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<sup>12</sup> EB-2018-0188, Project Summary, page 1 of 23.

<sup>13</sup> EB-2017-07-26, Exhibit C, Tab 1, Schedule 1, Page 2 of 4, Paragraph 7.



Mains.<sup>14</sup> (As noted below, however, the usual economic feasibility analysis is not required in this case.)

30. Further, the environmental assessment process set out in the Environmental Guidelines is applicable to and suited for pipelines such as the (backbone) Facilities for the South Bruce project (i.e., the backbone of the system) – i.e., a study of alternative routes, socio-economic impacts, etc. However, the same considerations are not applicable or appropriate for the Customer Connection Lines. This point is elaborated upon in Section E of this reply submission.

**D. Economics and Feasibility**

31. Enbridge has submitted that the economic feasibility of the South Bruce project must be demonstrated via the application of the EBO 188 test. No other party submitted that this is applicable or an issue. However, Board Staff in interrogatories did request that EPCOR perform a discounted cash flow (DCF) analysis) and report a net present value (NPV) for the South Bruce project.
32. EPCOR declined to provide this information, on the basis that EPCOR made commitments in its CIP that transferred the risk relating to the South Bruce project's costs and revenues to EPCOR. Board Staff accepted this, indicating in their submission that: "EPCOR's proposal was the result of a competitive process that dis-incented the proponents from

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<sup>14</sup> EB-2017-07-26, Exhibit F, Tab 1, Schedule 1, Page 4 of 9.

overstating costs. OEB staff therefore has no concerns with the estimated costs of the Proposed Project.”<sup>15</sup>

33. EPCOR submits that the economic feasibility of the South Bruce project is not to be evaluated on a strict application of the EBO 188 test. Indeed, this LTC application is the product of the Board’s Generic Proceeding on Natural Gas Expansion<sup>16</sup>, which was premised on overcoming the barriers presented by the EBO 188 test to the expansion of natural gas systems to rural and remote areas.<sup>17</sup> In their findings on the issue of how these barriers could be overcome, the Board stated:

E.B.O. 188 guidelines function well in the natural growth driven expansion of the distribution system at the edge of the serviced areas. These areas often do not require large investments, and in the case of new development, there is an identifiable party available to pay any contribution that may be required.

These guidelines function less effectively when applied to expansions to discrete new areas which are not contiguous to the existing distribution system.

The requirement for exemptions from E.B.O. 188 is due to the failure of the economic tests using existing rates for the various rate classes in the expansion area. Altering the thresholds within the existing guidelines and obtaining direct funding from existing customers<sup>18</sup> to accommodate the shortfall in revenues would not be required if the expanded system had stand-alone rates intended to cover the cost of the expansion.

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<sup>15</sup> In this same section of their submission (Board Staff submission, p.9), Board Staff did raise its concern about cost overruns related to construction of the Facilities and the implications for rebasing in year 11. EPCOR has addressed that issue starting at paragraph 6 of this reply submission.

<sup>16</sup> EB-2016-0004, Decision with Reasons, November 17, 2016, page 7.

<sup>17</sup> Ibid, p. 7.

<sup>18</sup> The Board stated this in reply to the arguments of many (including the existing utilities) that altering the EBO 188 thresholds and allowing for some measure of cross-subsidization was a way to overcome the EBO 188 barriers.

The OEB agrees with the submissions of South Bruce and CCC that support the establishment of stand-alone rates.<sup>19</sup>

34. Thus, the Board determined that for contested community expansion projects, the test for economic feasibility could be satisfied via stand alone rates, since stand alone rates achieved the same result as EBO 188 (i.e., prevention of cross-subsidization between new and existing customers).
35. This key finding in EB-2016-0004 (that the use of standalone rates would prevent cross subsidization, while allowing for expansion into previously unserved communities) is the precise scenario in the South Bruce expansion, where the use of a standalone rate structure ensures that the project will not be cross subsidized by any other rate payers.
36. Enbridge further concludes that the South Bruce project should achieve certain minimum PI thresholds<sup>20</sup>. The use of a PI as a measure of potential cross subsidization is based on a concern that has been rigorously addressed in this case where the community expansion has been the subject of the Board's competitive process. The concern goes to what is an acceptable PI for a project. An underlying principle of the competitive process through which EPCOR was awarded CPCNs for the South Bruce municipalities was that the 10-year revenue requirement proposed in its CIP was acceptable in terms of covering capital and OM&A costs for the system (i.e. the net present value (NPV), or PI, of the project was acceptable). As EPCOR is taking the risk on customer connections, volume and OM&A costs during the 10-year rate stability period, and capital costs<sup>21</sup> for the life of the project,

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<sup>19</sup> EB-2016-0004, Decision with Reasons, November 17, 2016. Ibid, p. 18.

<sup>20</sup> Enbridge Submissions, June 3, 2019, paragraph 26.

<sup>21</sup> This risk on capital costs is related to the system detailed in EPCOR's CIP.

and has accepted that the 10-year revenue requirement is sufficient to cover its costs, there is no need to rely on a PI to determine whether the return on a project is acceptable.

37. Other instances of cross subsidization can occur where a project's capital and OM&A costs are pooled with other ratepayers. In that case, a measure of any cross subsidization is the determination as to whether the PI of a project is greater than 0.8. The South Bruce expansion project is truly a standalone project. The system's capital and OM&A costs are not comingled with any other rate bases or costs, but are incurred, recorded and expensed only within the framework of the Southern Bruce system. It is also worth noting that, as it relates to OM&A costs, as per the Board's decision in EB-2016-0137/0138/0139, fully allocated OM&A costs have been used to determine the revenue requirement for this project. This "prevents cross-subsidization of new expansion customers by current ratepayers".<sup>22</sup> As a result, calculation of a PI would not be determinative of whether cross subsidization is taking place, as there is no possibility for such cross-subsidization.

**E. Environmental/Regulatory Matters**

38. EPCOR submits that the Environmental Report prepared by Stantec Consulting for the South Bruce project is compliant with the Board's Environmental Guidelines, and in particular its provisions dealing with, *inter alia*, public participation, route selection, archaeological matters, impact mitigation, construction and operation activities, safety considerations, hydrostatic testing, and station site development.
39. ***Preferred Route***: Two potential routes were considered in the Environmental Report, and Alternate A was selected by EPCOR as the preferred route. The Environmental Report was

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<sup>22</sup> EB-2016-0137 / 0138 / 0139, South Bruce Expansion Applications Decision and Order, April 12, 2018, page 10.

provided to the Ontario Pipeline Co-ordination Committee (“OPCC”) for review, and comments were received from the Ministry of Environment, Conservation and Parks, the Ministry of Natural Resources and Forestry, and the TSSA. There were no outstanding concerns from OPCC members.

40. No party has suggested that the selection of the preferred route was flawed, or suggested an alternative route.
41. ***Environmental Protection Plan:*** EPCOR provided a draft Environmental Protection Plan (“EPP”)<sup>23</sup> for the South Bruce project, and has indicated that it intends to file the final version of its EPP by June 30, 2019.<sup>24</sup>
42. No party to this proceeding takes issue with this approach.
43. ***Archaeological Assessment:*** Board Staff, in its submission, notes that the Stage 1 Archaeological Assessment required that certain locations undergo a Stage 2 Archaeological Assessment. Because these Stage 2 Archaeological Assessments have not yet been completed, Board Staff recommends that any LTC approval be conditional on EPCOR obtaining, filing with the OEB, and adhering to the Stage 2 Archaeological Assessment.
44. EPCOR does not object to inclusion of this condition.
45. ***Scope of Environmental Report:*** In its June 3<sup>rd</sup> submission, Enbridge stated that: “There has been no clear evidence presented by EPCOR on why the distribution systems that form

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<sup>23</sup> Response to OEB Staff interrogatory #17.

<sup>24</sup> See Board Staff submission, p. 10.

an integral part of the proposed project were not included within the study area of the Environmental Report.”<sup>25</sup>

46. In light of the Enbridge submission, Board Staff filed a letter following its June 3<sup>rd</sup> submission indicating that upon further consideration, the Environmental Report should have included the Customer Connection Lines. As a result, Board Staff recommends that LTC approval be conditional on amending the Environmental Report to capture the Customer Connection Lines.
47. As noted in the preliminary submissions, it is EPCOR’s position that only the Facilities (and not the Customer Connection Lines) require LTC approval and consequently, the Environmental Report is adequate and need not cover the Customer Connection Lines.
48. In Section C, EPCOR explained its reasoning as to why LTC approval was not required for the Customer Connection Lines (but only for the Facilities). That determination drives the appropriate scope of the Environmental Report. Indeed, the Environmental Guidelines explicitly state that they: “do not cover distribution system expansions that require only a Certificate of Public Convenience and Necessity or a Franchise Agreement in accordance with sections 8, 9 and 10 of the Municipal Franchises Act, 1990 c. M55 (Municipal Franchises Act). These projects shall be planned and assessed in accordance with the environmental screening principles, as directed in the OEB’s “E.B.O. 188 Natural Gas System Expansion Report”, January 30, 1989 (E.B.O. 188).”
49. However, even if one were to de-couple the link between the scope of the LTC approval and the scope of the Environmental Report, EPCOR submits that a more appropriate

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<sup>25</sup> Enbridge Submission, para. 21.

approach to assessing the environmental impacts of the Customer Connection Lines, would be to follow the environmental screening criteria in EBO 188.

50. The Environmental Guidelines require, *inter alia*: (a) specific indigenous and public consultation processes; (b) a study of alternative routes (at a minimum); (c) the identification of impacts to land use, vegetation and wildlife, watercourse crossings, provincial parks and conservation reserves, mineral resources, etc. and associated mitigation of such impacts; and (d) scrutiny of construction and operating activities. This makes sense in respect of major “backbone” facilities (such as the Facilities), where the purpose is to determine why a proponent has selected a proposed route. It does not make sense when dealing with small, routine facilities to connect customers (such as the Customer Connection Lines), where route selection is typically not an issue as those facilities lie primarily within roadways, etc. where there is already existing (other) utility or telecommunications infrastructure. The added uncertainty of where precisely the Customer Connection Lines will be installed due to (at the outset) unknown customer penetration and conversion criteria also contributes to the uncertainty of completing the parameters within the Guidelines.
51. More appropriate, considering the nature of the Customer Connection Lines, is the Board’s environmental screening criteria, which is focused on determining whether significant features may be impacted in constructing connection lines, and proposing various mitigation measures.
52. In the South Bruce project, EPCOR has applied this approach consistent with other approved natural gas projects, where the Environmental Report is only completed for the primary distribution or transmission line and the environmental screening criteria as



described in Appendix B – OEB Guidelines for Assessing and Reporting on Natural Gas System Expansion in Ontario is applied to the remainder of the community distribution system. Any environmental and archaeological concerns regarding the Customer Connection Lines will be identified through the environmental screening criteria referenced in Appendix B and EPCOR will file all environmental screening criteria with the OEB prior to commencing construction on the elements of the South Bruce project that are not covered in the current Environmental Report. EPCOR will also continue to consult with the Saugeen Ojibway Nation on archaeological and hydrogeological considerations during the development of the environmental screening criteria.

53. However, should the Board determine that the Environmental Report should be amended to incorporate the Customer Connection Lines, EPCOR is supportive of the approach recommended by Board Staff – i.e., to allow for construction of the Facilities to proceed (without delay) while the Environmental Report is amended.

**F. Indigenous Consultation**

54. EPCOR submits that it has discharged its delegated consultation obligations in connection with the South Bruce project. Board Staff agrees, and no other party disagrees.
55. EPCOR's submission on this point is supported by the following:
- a. EPCOR has sought to engage affected indigenous groups listed in the consultation delegation letter provided by the Ministry of Energy, Northern Development and Mines ("MENDM") in connection with the South Bruce project. Details of EPCOR's efforts were set out in the evidence.

b. EPCOR is committed to ongoing engagement and relationship building with all identified indigenous communities concerning the South Bruce project. This includes listening to and attempting to address any concerns, and seeking any information on the exercise and potential impacts to any indigenous rights in the South Bruce project area.

c. MENDM has stated that it is of the opinion that the procedural aspects of consultation undertaken by EPCOR for the South Bruce project were satisfactory.<sup>26</sup>

56. Anwaatin Inc. (“**Anwaatin**”), a collective of indigenous communities beyond those within the South Bruce region, made a number of submissions in connection with the interests of indigenous communities in accessing natural gas. Anwaatin has made a number of requests of the Board – only some of which relate directly to this proceeding and the issue of whether the delegated consultation obligations have been met by EPCOR. Each of these requests are addressed below:

57. First, Anwaatin has requested that the Board expressly determine whether EPCOR has adequately consulted with affected indigenous communities. EPCOR agrees that the Board should expressly make such determination, and that based on the evidence provided in this proceeding (noted in paragraph 55 above) that EPCOR has adequately consulted.

58. Second, Anwaatin requests that the Board include a condition (in any LTC approval granted to EPCOR) that EPCOR provide First Nations with certain information<sup>27</sup> for each work site during construction and for the lifecycle of the South Bruce project where

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<sup>26</sup> Response to OEB Staff interrogatory 14.

<sup>27</sup> The information that Anwaatin requests be provided includes: (a) location and size of site; (b) plans to protect the environment and sensitive watershed; and (c) the contamination characteristics, dewatering details, and water treatment and discharge plans for the site.

maintenance work involving excavation or integrity digs are required. EPCOR is not supportive of the Board imposing this condition. The scope of the obligation, as requested, is very broad – applying to not only excavations during construction but any excavation during the operation of the South Bruce system post-construction. Moreover, EPCOR has committed to having (and offered to pay for) indigenous monitors to participate in the archaeological work associated with the construction phase. In addition, EPCOR will have legal obligations in respect of a number of the matters of concern to Anwaatin, including general obligations under the *Environmental Protection Act* (Ontario) to prevent discharges to the natural environment.

59. Third, Anwaatin requests that the Board require EPCOR to permit indigenous monitors to participate in EPCOR's environmental and archaeological assessment and monitoring work at any work site, both during construction and for the life cycle of the project (and provide reasonable financial resources to First Nations to hire and administer the monitors). Again, EPCOR is not supportive of the imposition of such a condition. As noted above, EPCOR has committed to having indigenous monitors to participate in the archaeological work associated with the main construction of the South Bruce project, but believes that extending this as a requirement to every work site during the operation of the Facilities is overly broad. Moreover, the vast majority of the project is to be constructed within disturbed areas (existing roadways). Also, EPCOR is bound by laws of general application related to environmental protection (most notably, the *Environmental Protection Act* (Ontario)) and archaeological resources (most notably, the *Ontario Heritage Act*).
60. Fourth, Anwaatin requests that EPCOR be required to have adequate insurance and set aside a reserve of funds for clean up, compensation, etc. in the event of a project accident.

EPCOR believes this requirement is unnecessary. As part of this LTC, EPCOR has undertaken a Pipeline Hazard Assessment (Exhibit A, Tab 9, Schedule 6) and an Environmental Report. The latter sets out a variety of measures to be undertaken by EPCOR to protect, and mitigate any impacts on, all relevant components of the natural environment. While not a matter for a LTC, EPCOR confirms that it maintains insurance coverage as is prudent for a natural gas utility.

61. Fifth, Anwaatin requests that the Board stipulate that all affected First Nations communities receive natural gas service and natural gas rates that reflect their inherent rights to the land and resources upon which the South Bruce project is built. This request is beyond the scope of this LTC application and moreover, the South Bruce project is not (as currently configured) serving any First Nation communities.
62. Finally, Anwaatin has certain specific requests related to EPCOR's requested municipal franchise agreements, which are dealt with more fully in Section I of this reply submission.

**G. Land Matters**

63. The preferred route for the South Bruce project is set out in section 2.7 of the Environmental Report, and is described by EPCOR in its evidence at Exhibit A, Tab 3, Schedule 1. Further evidence related to land matters is set out at Exhibit A, Tab 10, Schedule 1.
64. As acknowledged by Board Staff in its submission, the majority of the pipeline will be constructed within existing road allowances.<sup>28</sup> For any sections outside of such

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<sup>28</sup> See the table at section 21 of Exh. A/10/1, p.4.

allowances, EPCOR intends to secure land rights by way of easements from the relevant landowners.

65. EPCOR has finalized the land tenure arrangements for the construction of the Dornoch and Bruce Energy Centre stations, which are the only two station locations required for the 2019 construction season. For the remaining five stations, EPCOR expects to conclude land purchase arrangements by the end of fall 2019, but the timing of these discussions are not expected to have any impact on project costs.
66. EPCOR has included its standard Pipeline Easement Agreement in its evidence,<sup>29</sup> and has confirmed that it is substantially similar to those previously approved by the Board.<sup>30</sup>
67. No party has expressed any issue with respect to the land matters or form of Pipeline Easement Agreement in connection with the South Bruce project. EPCOR submits that the Board should approve the form of agreement.

#### **H. Certificates of Public Convenience and Necessity**

68. In its submissions, Enbridge argued that EPCOR should be required to provide metes and bounds information for the CPCNs already granted by the OEB (i.e., for the Southern Bruce Municipalities) along with the CPCNs requested for Chatsworth, Brockton, West Grey.
69. OEB Staff supported EPCOR's request for CPCNs, stating that "all certificates necessary for EPCOR to serve the Southern Bruce Municipalities should be granted." OEB Staff suggested that EPCOR be granted "functional" CPCNs for Chatsworth, Brockton and West

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<sup>29</sup> Exhibit A/10/2, pages 1 through 20, inclusive of EPCOR's form of Work Space Agreement.

<sup>30</sup> Response to OEB Staff interrogatory #6(e).

Grey, limited only to the roads the high-pressure mains will traverse and for the express purpose of bringing gas to the Southern Bruce Municipalities, and that unserved customers near EPCOR's pipeline should be the subject of a future competition to determine who can best serve such customers. OEB Staff also expressed their view that the OEB's determination in EB-2017-0108 (namely, that upper-tier CPCNs are unnecessary in the circumstances) applies broadly to all applications for CPCNs and franchise agreements, such that EPCOR does not need CPCNs for the upper-tier municipalities of the County of Bruce and the County of Grey.

70. With respect to Enbridge's request that metes and bounds information be provided for the CPCNs for the Southern Bruce Municipalities, EPCOR submits that it is not necessary to consider this issue because these CPCNs are valid and that this LTC application is not the proper proceeding to attack the validity or content of these CPCNs.
71. As opposed to a "functional" CPCN proposed by OEB Staff, EPCOR proposed CPCNs for the "pass-through" municipalities limited to 500 metres on either side of the pipeline route. It is not clear to EPCOR the evidence or basis for OEB Staff's asserts that "most residents and businesses along the route live within 500 metres of either side of this route", however, EPCOR also accepts and confirms that the intent behind its request for CPCNs for Chatsworth, Brockton, and West Grey is to authorize the construction and operation of the pipeline required to pass through those municipalities in order to serve the Southern Bruce Municipalities. EPCOR takes no position on whether the most efficient approach to facilitate the passing through of its pipeline is a "functional" CPCN or a "geographic"

CPCN limited to a narrow 500-metre strip and will prepare and file CPCNs that are responsive to the OEB's determination on this matter.

72. With respect to the need, or lack thereof, for CPCNs for the County of Bruce and the County of Grey, provided that the OEB clearly indicates in its Decision and Order that no CPCNs are required for the County of Bruce or the County of Grey in order to construct and operate its pipeline and serve the Southern Bruce Municipalities, then that approach is acceptable to EPCOR.

**I. Municipal Franchise Agreements**

***Clause 4 – Duration of Agreement and Renewal Procedures***

73. Enbridge argued that EPCOR must amend clause 4 of the Franchise Agreements proposed for Arran-Elderslie, Kincardine, Huron-Kinloss, Chatsworth, Brockton, West Grey, Bruce County and Grey County by selecting clause 4(b) of the Model Franchise Agreement rather than 4(a) on the basis that Enbridge already provides gas distribution services in these municipalities. OEB Staff observed that it was unable to find any precedent regarding the applicability of clause 4(a) or 4(b) of the Model Franchise Agreement, and was of the view that clause 4(a) should apply if the OEB interprets the statement "If the Corporation has previously received gas distribution services" as meaning services from the same distributor, because EPCOR has not previously provided services.
74. As EPCOR stated in its response to Enbridge Interrogatory 4(c), the use of clause 4(b) of the Model Franchise Agreement does not appear to be appropriate because the proposed franchise agreements deal with what are effectively "greenfield" projects. Further, clause



4(b) appears to address situations where a mechanism is needed to incorporate amendments to the Model Franchise Agreement that are favourable to a municipality who has entered into a franchise agreement, or a series of franchise agreements, with an incumbent natural gas distributor. In the case before the OEB, there are no previous franchise agreements between the municipalities and EPCOR, and the proposed Franchise Agreements are all based on the most up-to-date version of the OEB's Model Franchise Agreement. However, as EPCOR also stated, if the OEB determines that clause 4(b) should be used, then it will modify its proposed franchise agreements accordingly.

***Process for Approving Franchise Agreements***

75. Enbridge argued that the effective date of the proposed Franchise Agreements should be the later of the date of the OEB's Decision and Order approving said Franchise Agreements and the final readings of the municipal bylaws (also approving the Franchise Agreements). Enbridge also argued that EPCOR did not follow the typical process of delaying the finalization of the approving municipal by-law finalizing until the Franchise Agreements were approved by the OEB.
76. OEB Staff also argued that EPCOR's process did not follow the typical process for franchise agreements, but OEB Staff nonetheless submitted that the OEB should approve the proposed Franchise Agreements and declare that the assent of the electors is not necessary. OEB Staff appeared to favour the approach proposed by EPCOR of the OEB explicitly declaring that the effective date of the proposed Franchise Agreements is the date of the applicable Decision and Order in this proceeding.

77. It is EPCOR's strong preference that the OEB approve the proposed Franchise Agreements as-is and declare that the effective date of the proposed Franchise Agreements is the date of its Decision and Order, and that the assent of the municipal electors is not required. Requiring EPCOR to request that the municipalities re-pass by-laws and re-execute the Franchise Agreements places an unnecessary and undue burden on each municipality's resources, especially in light of each municipality's clear support for EPCOR's gas distribution services.
78. EPCOR submits that the most efficient use of the OEB's, the municipalities' and EPCOR's time and resources is for the proposed Franchise Agreements to remain unamended (e.g., no change from clause 4(a) to 4(b)) and for the OEB to declare that the assent of the municipal electors is not required and the effective date of the proposed Franchise Agreements is the date of the Decision and Order. Having a uniform effective date offers the additional benefit of administrative efficiency, which will allow EPCOR to apply for, and the OEB to address, renewals at the same time.
79. Finally, OEB Staff submitted that section 6 of the *Municipal Franchises Act* creates an exemption from the overall requirement for OEB pre-approval of a by-law and the terms of a franchise agreement, such that OEB approval is not required for the proposed Franchise Agreements for Chatsworth, West Grey, Brockton and Grey County. EPCOR is supportive of OEB Staff's interpretation of section 6 of the *Municipal Franchises Act* and would welcome an OEB determination that the proposed Franchise Agreements listed in this paragraph are already valid and require no pre-approval or further steps.

***Modifications to the Model Franchise Agreement***

80. Anwaatin argued that EPCOR's proposed Franchise Agreements must incorporate certain aspects of the Official Plan of Bruce County. However, Anwaatin acknowledged that the proposed Franchise Agreements are based on the OEB's Model Franchise Agreement, therefore it appears to EPCOR that Anwaatin's concerns lie with the Model Franchise Agreement itself and not the proposed franchise agreements that are at issue in this proceeding. The OEB has made clear that deviations from the Model Franchise Agreement are rarely approved absent a compelling reason to do so.<sup>31</sup> EPCOR submits that consideration for modifications to the Model Franchise Agreement is more appropriate in a generic proceeding dedicated to the terms of the Model Franchise Agreement, and not this LTC proceeding.

**J. Conditions of Approval**

81. OEB Staff submits that the OEB should approve EPCOR's South Bruce project subject to certain conditions of approval as detailed in Appendix A of its submission. Other than as detailed below, EPCOR does not object to these conditions.
82. In its responses to interrogatories, EPCOR had proposed to strike requirements to notify the OEB of any material change in the project cost (Condition 4 in the OEB Staff interrogatory, Condition 5 in Appendix A of OEB Staff submission) as well as the inclusion

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<sup>31</sup> Indeed, in EB-2017-0232, the Board rejected EPCOR's request for approval of a franchise agreement that modestly departed from the Model Franchise Agreement.

of a variance analysis of project cost in the Post Construction Completion Report (Condition 5 in the OEB Staff interrogatory, Condition 6 in Appendix A). OEB Staff oppose this request, on the basis that submission of this information will assist the OEB in monitoring the extent to which project costs will affect EPCOR's rate case at the end of the 10-year rate stability period. OEB Staff also note that Enbridge has accepted these conditions in one of its community expansion projects in which it has committed to a 10-year rate stability period and is bearing the same risks for any capital cost overruns and attachments/volumes.

83. As detailed above, EPCOR has accepted the risk of capital cost overruns related to the system as detailed in the CIP. This risk extends past the 10-year rate stability period, and as a result EPCOR will be unable to include any capital cost overruns (arising in the deferral period) in its rate base for the purpose of establish revenue requirements subsequent to the 10-year rate stability period. As a result, monitoring capital costs will not yield useful or relevant information as any cost overruns will have no impact on subsequent rate cases.
84. Thus, while Enbridge has apparently accepted the condition of reporting on cost overruns, Enbridge is not bearing the same risks for capital costs overruns as EPCOR. As detailed in the Decision and Order for the Fenelon Falls Community Expansion, which is submitted under the same framework established by the Generic Decision (EB-2016-0004): "Enbridge proposed that any variance in the capital costs for a project would be captured in a subsequent rate rebasing application, which could occur prior to the end of the ten year term of the RSP<sup>32</sup>". As a result, Enbridge is not only not taking any risk associated with

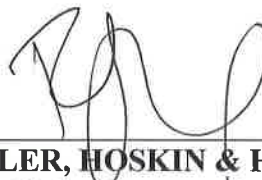
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<sup>32</sup> EB-2017-0147, Decision and Order, March 1, 2018, page 14.

capital cost overruns after the 10-year rate stability period, it also appears that any cost overruns may be in rate base before the end of that period. Given Enbridge's shifting of cost overrun risk onto ratepayers, there is obvious value in the OEB monitoring cost overruns. There is no commensurate value in such monitoring for EPCOR's South Bruce project.

85. IGUA suggests that reporting on capital costs would be useful because EPCOR may underspend (although indicating it was not suggesting that EPCOR has in any way provided any indication that it would "cut corners"). Given the many variables that drive the capital costs of a project of this magnitude, it is not clear how the type of variance reporting that is proposed would be of any particular use in identifying underspending. Therefore EPCOR proposes that this argument be disregarded.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED,**  
this 10<sup>th</sup> day of June, 2019, by its counsel,



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**OSLER, HOSKIN & HARCOURT LLP**

Per: Richard J. King, Partner