



34 King Street East, Suite 600
Toronto, Ontario, M5C 2X8
elenchus.ca

**Assessment of the Rate Proposals in
the Enbridge Gas Inc. Owen Sound
Reinforcement Project Leave to
Construct & Rate M17 Application**

**Report prepared by
John Todd, President
Elenchus Research Associates Inc.**

**Prepared for EPCOR Natural
Gas Limited Partnership**

10 January 2020

Page Intentionally Blank

Table of Contents

Executive Summary	1
1 Introduction	5
2 Background.....	6
2.1 The Ontario Energy Board Act, 1998	8
2.2 Previous Related Policy Processes and Decisions	9
2.2.1 The Natural Gas Electricity Interface Review	9
2.2.2 Generic Community Expansion proceeding (EB-2016-0004)	14
2.2.3 The <i>Access to Natural Gas Act, 2018</i>	16
2.2.4 Ministers’ Section 35 Letter to the OEB, December 12, 2019.....	17
2.3 Gas Storage, Load Balance and Operational Flexibility	19
3 Proposals of Enbridge in the Application.....	21
3.1 Enbridge Rate Proposals	22
3.2 The Enbridge CIAC Proposal.....	23
3.3 The Enbridge Meter Station Cost Proposal.....	24
4 Competitively Neutral Options.....	24
4.1 A Competitively Neutral Approach to Contribution in Aid of Construction	25
4.2 A Competitively Neutral Approach to Station Costs	26
4.3 A Competitively Neutral Approach to Operational Flexibility Service (Daily Load Balancing)	27
4.4 A Competitively Neutral Approach to Seasonal Storage	28

Appendices

Appendix A: Resumé of John Todd

Appendix B: OEB Form A, Acknowledgement of Expert’s Duty

Page Intentionally Blank

1 EXECUTIVE SUMMARY

2 The current proceeding has its origins in the Government of Ontario's 2013 Long-Term
3 Energy Plan ("2013 LTEP"). The chain of events that subsequently spawned the
4 introduction of a competitive framework for community expansion is set out in the
5 introduction to the Ontario Energy Board's ("OEB's") decision in the Generic Community
6 Expansion Proceeding¹. The establishment of a regulatory framework that would facilitate
7 competition was an issue that was integral to that proceeding.

8 EPCOR Natural Gas Limited Partnership's ("ENGLP's") South Bruce project was the first,
9 and to date the only, community expansion project that has been subject to a competitive
10 bidding process. The OEB's decision in the South Bruce Expansion Applications² issued
11 on April 12, 2018 ("the Expansion Decision") declared ENGLP the successful proponent
12 for the Southern Bruce natural gas distribution system. The current proceeding is not only
13 a critical step in completing the South Bruce project, but also a critical step in fleshing out
14 the OEB's vision of competitive community expansion. A central issue addressed by this
15 evidence is the extent to which the terms and conditions of gas service provided by
16 Enbridge Gas Inc. ("Enbridge") to new distributors will be compatible with the principles
17 of a level playing field between existing and new distributors.

18 Based on my analysis of the issues I have concluded that the Enbridge Gas proposals, if
19 accepted by the OEB as filed, will establish precedents that will result in an approach that
20 would provide a competitive advantage to existing distributors in any future competitive
21 process.

22 In the retainer letter to Elenchus from ENGLP for this report, Elenchus was asked to
23 address four topics. Each topic is set out below, followed by my summary conclusion.

24 ***Topic #1: Is the proposed new Rate M17 service for new gas distributors and the***
25 ***proposed limitation on access to the existing Rate M9 and Rate T3 services to***

¹ Decision with Reasons, EB-2016-0004, Ontario Energy Board Generic Proceeding on Community Expansion, November 17, 2016,

² EB-2016-0137 | EB-2016-0138 | EB-2016-0139.

1 *existing gas distributors in the Union South Rate Zone consistent with generally*
2 *accepted regulatory principles, established OEB practices and policies, and OEB*
3 *precedents?*

4 **NO.** The proposal to limit access to the existing Rate M9 and Rate T3 services to existing
5 gas distributors in the Union South Rate Zone has the effect of making Rate M17 service
6 mandatory. This result is not consistent with generally accepted regulatory principles,
7 established OEB practices and policies, and OEB precedents because the Ontario
8 Government and the OEB have introduced legislation and regulatory policies that are
9 designed to facilitate expansion and competition among existing and new distributors in
10 providing service to new communities. In light of the government policy to expand natural
11 gas service and the regulatory policies that have been introduced by the OEB related to
12 the Generic Community Expansion decision, the proposal to limit access to the existing
13 Rate M9 and Rate T3 services to existing gas distributors in the Union South Rate Zone
14 would impose costs on new distributors that will not be borne by existing distributors. This
15 unequal treatment violates the principle of ensuring that the playing field is as level as
16 practical for competitive community expansion.

17 **Topic #2:** *Are the terms and conditions of the proposed Rate M 17 consistent with*
18 *generally accepted regulatory principles, established OEB practices and policies, and*
19 *OEB precedents?*

20 **NO.** The proposed terms and conditions of Rate M17 will deny access to daily load
21 balancing services to new distributors. Existing distributors will be able to avoid the
22 incremental cost consequences of this limitation as daily load balancing is embedded in
23 their existing services. The OEB's Natural Gas Electricity Interface Review report and its
24 Generic Community Expansion decision make it clear that the limitations on access to
25 cost-based storage are intended to apply only in circumstances in which customers have
26 access to storage on a competitive basis. Enbridge's proposed M17 terms and conditions,
27 particularly as they relate to nomination windows for transportation, and the related daily
28 volumetric information that is available only to Enbridge Gas, make it infeasible for
29 prospective M17 customers to adhere to the daily balancing requirements of Enbridge
30 Gas. The end result is that the proposed terms and conditions for Rate M17 will force new

1 distributors to contract storage for daily load balancing from Enbridge at unregulated rates
2 although competitive alternatives are not available in the market.

3 **Topic #3:** *Is Enbridge's proposed economic test and any resulting Contributions in*
4 *Aid of Construction (CIAC) for transmission system expansion consistent with*
5 *generally accepted regulatory principles, established OEB practices and policies and*
6 *OEB precedents?*

7 **YES, in terms of the test used; NO in terms of how the test has been applied.**

8 Enbridge has only applied Stage 1 of the three stage EBO 134 economic test to calculate
9 the CIAC. Using this test for transmission system expansion projects is consistent with
10 generally accepted regulatory principles and established OEB practices and policies.
11 However, Enbridge is proposing to apply the EBO 134 test in a manner that is not
12 consistent with the established practices that have been approved by the OEB for
13 previous EBO 134 Projects. The standard practice has been to rely on the combined
14 result of applying Stage 1, Stage 2 and Stage 3 economics usually resulting in the OEB
15 accepting that no CIAC would be required for projects with Stage 1 PI's have been as low
16 as 0.19 with a resulting residential rate impact of 1.2% in one case. The Stage 1 PI for
17 the Owen Sound Reinforcement Project is 0.31 and the residential rate impact if not
18 charged to ENGLP would be 0.1%. Unless a standardized Stage 1 PI is established by
19 the OEB, as well as clear guidelines for the Stage 2 and 3 tests, the proposed CIAC would
20 set a precedent by tilting the playing field in favour of Enbridge and it would violate the
21 principle of ensuring that the playing field is as level as practical for competitive
22 community expansions.

23 **Topic #4:** *Assess the implications of Enbridge's proposed modifications to the*
24 *existing Rate M9 and Rate T3 as set out in the application and associated evidence.*

25 **ASSESSMENT:** The proposed modifications to the existing Rate M9 and Rate T3
26 services would make it mandatory for new distributors to rely on the new proposed Rate
27 M17 service for transporting gas to the new areas they serve. New distributors that are
28 competing with existing distributors for community expansion will therefore have to set
29 rates for the customers in the new community being served at a higher level, all other
30 factors being identical, than an existing distributor. This unequal treatment will tilt the

1 playing field in favour of existing distributors, which will undermine the principle of
2 ensuring that the playing field is as level as practical for competitive community expansion
3 projects.

4 The tilt in the playing field cannot be completely eliminated unless a core element of the
5 NGEIR decision is supplemented to allow new distributors to be allocated cost-based
6 storage on the same basis as an existing distributor would be allocated cost-based
7 storage to serve the same community. It would be consistent with the core conclusions
8 of the NGEIR decision “that long-term consumer protection in terms of price, reliability
9 and quality of service is best achieved through thriving competition for the competitive
10 elements of the storage market and **effective regulation of the non-competitive**
11 **elements of the market”** to refine the NGEIR decision to reflect the evolution of the
12 Ontario natural gas sector.

13 In addition, the introduction of a new mandatory service that does not include daily load
14 balancing to support operational flexibility raises a new issue. Since the practical reality
15 is that daily load balancing is not available on a competitive basis, it should be made
16 available on a rate-regulated basis. The most practical approach to doing this (if some
17 form of Rate M17 is to be approved) while maintaining a level playing field between
18 existing and new distributors competing for the right to serve new communities would be
19 to require Enbridge to include daily load balancing in its proposed Rate M17 service on
20 the same basis as it is bundled for Rate M9 and Rate T3 service. Unless this anti-
21 competitive consideration is addressed, new distributors, such as ENGLP in this case,
22 will be required to seek a new unregulated service from Enbridge where there are no
23 competitive options available.

1 INTRODUCTION

2 On August 29, 2019, Enbridge Gas Inc. (“Enbridge”) filed an application seeking the
3 Ontario Energy Board’s (“OEB”) approval for leave to construct natural gas pipeline
4 facilities, approval for a new Rate M17 firm transportation service for gas distributors, and
5 modifications to the applicability of its existing Rate M9 and T3 rate schedules to existing
6 gas distributors (“Application”). Paragraph 2 of the Application states that “This application
7 is in response to changes in the competition for natural gas distribution in Ontario as a
8 result of the OEB’s Decision with Reasons in its Generic Community Expansion
9 proceeding (EB-2016-0004).”³

10 Should the Application be approved as filed, new gas distribution company customers
11 (including EPCOR Natural Gas Limited Partnership (“ENGLP”) in the South Bruce region)
12 will be required to take the new Rate M17 service, although existing distributors will
13 continue to have access to the Rate M9 and Rate T3 services to transport gas to both
14 existing and new franchise areas, including areas that incumbent distributors are seeking
15 to serve by means of system expansion projects initiated within the OEB’s competitive
16 framework.

17 ENGLP asked Elenchus to prepare an independent expert report⁴ that addresses the
18 following topics:

- 19 1. Is the proposed new Rate M17 service for new gas distributors and the proposed
20 limitation on access to the existing Rate M9 and Rate T3 services to existing gas
21 distributors in the Union South Rate Zone consistent with generally accepted
22 regulatory principles, established OEB practices and policies, and OEB precedents?
- 23 2. Are the terms and conditions of the proposed Rate M17 consistent with generally
24 accepted regulatory principles, established OEB practices and policies, and OEB
25 precedents?

³ EB-2019-0183, Exhibit A, Tab 1, Schedule 2, Page 1 of 4. In this report, references to the Application and Evidence are abbreviated in the form Ex. A/T1/S2/P1.

⁴ This report was prepared by John Todd, President of Elenchus. His resumé is attached as Appendix A.

- 1 3. Is Enbridge's proposed economic test and any resulting Contributions in Aid of
2 Construction ("CIAC") for transmission system expansion consistent with generally
3 accepted regulatory principles, established OEB practices and policies and OEB
4 precedents?
- 5 4. Assess the implications of Enbridge's proposed modifications to the existing Rate M9
6 and Rate T3 as set out in the application and associated evidence.
- 7 In the Application, Enbridge is also seeking approval for other requests that are integral
8 to the leave to construct. These matters are not addressed in this report.

9 **2 BACKGROUND**

10 This section reviews the key OEB objectives, processes and decisions that Enbridge has
11 relied on to provide context for its proposals.

12 The first paragraph of the section of the Application entitled "Drivers of the Proposed
13 Service" (Ex. B/T1/S1), states:

14 *Enbridge developed the Rate M17 transportation service for gas distributors in*
15 *response to changes in the competition for natural gas distribution in Ontario.*
16 *[Footnote 1: EB-2016-0004 Generic Community Expansion Board Decision with*
17 *Reasons dated November 17, 2016] Enbridge is proposing the M17 service to*
18 *EPCOR in response to EPCOR's request to provide transportation to the South*
19 *Bruce expansion area. In addition to making this service available to other potential*
20 *new entrants, existing customers who are gas distributors will also have the option to*
21 *take transportation service under Rate M17.]*

22 In my view, it would have been more transparent to have stated that Enbridge is proposing
23 that: (a) the Rate M17 service would be **mandatory** for ENGLP and other new gas
24 distribution companies; and (b) Enbridge's existing Rate M9 and Rate T3 services would
25 not be available to new entrants (although these existing M9 and T3 services would
26 continue to be available to existing gas distributors).

27 The only circumstance in which ENGLP or any other new entrant may choose an
28 alternative to the proposed Rate M17 service would be if they have the opportunity to by-

1 pass the Enbridge system (e.g., by connecting directly to the TC Energy system that
2 transits Ontario). In any other circumstance, there would be no alternative to Rate M17
3 available to new gas distributors. Consequently, there would generally be no competitive
4 alternative to Rate M17, and the new entrant would not have access to a transportation
5 service that is equivalent to the one received by existing gas distributors (who, again, may
6 be competing with new entrants provide service in a currently unserved location).

7 Enbridge has referred to the following excerpt from the Generic Community Expansion
8 proceeding as the rationale for proposing the new Rate M17 service in conjunction with
9 the proposed changes to the eligibility criteria for the Rate M9 and Rate T3 services:

10 *A framework that employs new rate zones would also facilitate the entry of new*
11 *participants and allow for competition. This would be accomplished by considering*
12 *the proposed rates for a potential service area in a leave to construct hearing.*
13 *Alternative competing bids could be considered by the [Board] at the same time. The*
14 *awarding of Franchise rights and Certificates can be considered in conjunction with*
15 *the Leave to Construct application **putting all on a level playing field**.⁵ (emphasis*
16 *added)*

17 A level playing field for the provision of distribution services to new communities will not
18 exist if existing and new distributors do not have equitable access to monopoly storage/
19 transmission services that are provided and controlled by an existing natural gas utility.

20 Whether the proposed changes, taken together, can be expected to enhance or inhibit
21 competitive environment envisioned by the OEB is discussed in section 2.3 below. A key
22 issue addressed in this evidence is whether the needs of new entrants is being met by
23 the proposed new Rate M17 service in a way that is not met by either of the existing Rate
24 M9 and Rate T3 transportation services, and whether Enbridge's proposals adhere to the
25 principle of "putting all on a level playing field" that appears in the quote from the EB-
26 2016-0004 Decision.

⁵ EB-2016-0004 Generic Community Expansion Board Decision with Reasons dated November 17, 2016, p.19.

1 **2.1 THE ONTARIO ENERGY BOARD ACT, 1998**

2 Section 2 of the *Ontario Energy Board Act, 1998* (“Act”) sets out the Board’s objectives in
3 relation to natural gas. The objectives, as currently drafted, are as follows.⁶

4 *Board objectives, gas*

5 *2 The Board, in carrying out its responsibilities under this or any other Act in relation*
6 *to gas, shall be guided by the following objectives:*

- 7 *1. To facilitate competition in the sale of gas to users.*
- 8 *2. To protect the interests of consumers with respect to prices and the reliability*
9 *and quality of gas service.*

10 *Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph*
11 *2 of section 2 of the Act is repealed and the following substituted: (See: 2019, c. 6,*
12 *Sched. 2, s. 2 (1))*

- 13 *2. To inform consumers and protect their interests with respect to prices and the*
14 *reliability and quality of gas service.*
- 15 *3. To facilitate rational expansion of transmission and distribution systems.*
- 16 *4. To facilitate rational development and safe operation of gas storage.*
- 17 *5. To promote energy conservation and energy efficiency in accordance with the*
18 *policies of the Government of Ontario, including having regard to the*
19 *consumer’s economic circumstances.*
- 20 *5.1 To facilitate the maintenance of a financially viable gas industry for the*
21 *transmission, distribution and storage of gas.*
- 22 *6. To promote communication within the gas industry and the education of*
23 *consumers.*

24 *Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph*
25 *6 of section 2 of the Act is amended by striking out “and the education of consumers”*
26 *at the end. (See: 2019, c. 6, Sched. 2, s. 2 (2))*

⁶ At the time of preparing this report, the noted amendments to paragraphs 2 and 6 of section 2 had not been proclaimed.

1 **2.2 PREVIOUS RELATED POLICY PROCESSES AND DECISIONS**

2 This section reviews the existing regulatory framework in order to identify principles that
3 should be recognized in examining the issues raised by the Application, and also to
4 identify any new regulatory issues raised by the Application.

5 **2.2.1 THE NATURAL GAS ELECTRICITY INTERFACE REVIEW**

6 In its Application, Enbridge asserts that “the creation of Rate M17 as proposed was
7 appropriate given the arrival of the first new entrant to the gas distribution market in
8 Ontario since the Board’s Decision in the Natural Gas Electricity Interface Review⁷
9 (“NGEIR”).” In my view, it is not credible to suggest that the NGEIR decision anticipated
10 a competitive environment for community expansion. That decision could not have taken
11 into account the framework that was established a decade later by the Generic
12 Community Expansion proceeding (EB-2016-0004), nor could it have anticipated the
13 initiatives of the current Ontario Government in support of community expansion. In my
14 reading of the NGEIR decision, it appears to address only the emergence of the
15 competitive storage alternatives that had become available to ex-franchise customers
16 such as the existing Ontario natural gas distributors and the emergence of gas-fired
17 generators as major natural gas customers in the province. It is notable that the potential
18 storage customers at the time of the NGEIR decision either had pre-existing
19 arrangements for both seasonal and daily balancing (existing distributors) or had access
20 to services that met their daily balancing requirements. No distributor or customer
21 required a stand-alone daily balancing service.

22 Potential new gas distributors obviously had no voice in the NGEIR process. Furthermore,
23 there is no evidence that the requirements of new entrants competing for the right to serve
24 new regions of the province was considered by any party in the process or by the OEB in
25 its decision. A review of the principles embedded in the NGEIR decision and
26 consideration of their reasonable application in the context of the subsequent

⁷ EB-2005-0551

1 developments with respect to the introduction of competitive discipline for the extension
2 of natural gas to new communities makes this clear.

3 The NGEIR proceeding was initiated as a follow-up to the OEB's Natural Gas Forum
4 which began in the 2003. As the OEB's Decision with Reasons in the NGEIR proceeding
5 states:

6 *In the fall of 2003, the Ontario Energy Board began a comprehensive sector review*
7 *– the Natural Gas Forum – to examine ways to further improve the efficiency and*
8 *effectiveness of natural gas regulation in Ontario. The impetus for this review was*
9 *recognition by the Board of the evolving natural gas market. In particular, the Board*
10 *recognized that conventional gas supply sources are expected to experience flat to*
11 *declining production. The anticipated increased reliance on non-conventional supply*
12 *sources raised questions regarding the need for infrastructure within Ontario to meet*
13 *changing natural gas flow patterns and about the adequacy of the current regulatory*
14 *treatment of natural gas. On the demand-side, the anticipated expansion of gas-fired*
15 *power generation was expected to affect the extent and type of investment required*
16 *in gas infrastructure in Ontario and to drive the convergence of gas and electricity*
17 *markets.⁸*

18 ...

19 *On December 29, 2005, the Board issued a Notice of Proceeding on its own motion*
20 *to determine:*

- 21 • *whether it should order new rates for the provision of natural gas transmission,*
22 *distribution and storage services to gas-fired generators (and other qualified*
23 *customers); and*
- 24 • *whether to refrain, in whole or part, from exercising its power to regulate the*
25 *rates charged for the storage of gas in Ontario by considering whether, as a*
26 *question of fact, the storage of gas in Ontario is subject to competition*
27 *sufficient to protect the public interest.⁹*

⁸ NGEIR Decision, p. 1.

⁹ NGEIR Decision, pp. 2-3.

1 There is no hint that the OEB foresaw the emergence of a competitive environment for
2 community expansion. As a consequence, the proceeding did not separately examine the
3 effective competitiveness of different storage-based services such as seasonal load
4 balancing and operational flexibility (daily load balancing).

5 Because the NGEIR decision did not consider competitive neutrality in cases where
6 multiple distributors are competing to provide distribution services in the same area, the
7 OEB must now reconcile the outcomes of the NGEIR decision relating to storage-based
8 services to ensure consistency with its newer policies related to competitive distribution
9 system expansion to new communities.

10 Consistent with the generally accepted view at the time, the OEB viewed storage as a
11 single potentially competitive service rather than as a gas supply tool that is used to
12 provide various storage-based services, each of which is potentially competitive. In other
13 words, the Board asked whether storage was competitive rather than addressing the
14 competitiveness of seasonal storage, daily load balancing (operational flexibility) and
15 other storage-based services. Given the different features of the storage services that are
16 required for the different storage-based services, it is now apparent that not all storage-
17 based services are workably competitive.

18 The issues addressed in the NGEIR proceeding were limited to:

19 *II. Storage regulation and whether the Board should refrain, in whole or part, from*
20 *exercising its power to regulate the rates charged for the storage of gas in Ontario,*
21 *including:*

- 22 • *Is the market competitive?*
- 23 • *Who should receive cost-based pricing?*
- 24 • *Who should receive market-based pricing?*
- 25 • *How should the amount of storage be allocated between the classes of*
26 *customers?*
- 27 • *Who should receive the premium?¹⁰*

¹⁰ NGEIR Decision, p. 3.

1 Given the context of the issues that were relevant at the time of the NGEIR process, it is
2 not surprising that nothing in the NGEIR report speaks directly to questions such as
3 whether the customers of new distributors should pay for storage (as a cost pass-through)
4 on the same basis as Enbridge distribution customers in the event that Enbridge and new
5 entrants are competing for the right to extend distribution service to a new community.¹¹
6 If this issue had been considered by the OEB at that time, to be consistent with its
7 approach to the issues it was addressing, one important determining factor would
8 inevitably have been whether the market is “workably competitive” for the specific
9 storage-based services required in the market.¹²

10 In today’s context, it is important to recognize that the NGEIR process was incomplete in
11 that it focussed on the competitiveness of storage services without differentiating between
12 the provision of seasonal storage and the provision of daily load balancing (i.e.,
13 operational flexibility¹³). This refinement of the storage question requires consideration of
14 the competitiveness of gas supply management. The finding that the storage market is
15 workably competitive - that storage companies do not have market power with respect to
16 the requirements of customers and (including ex-franchise distributors) for seasonal load
17 balancing and day ahead planning - does not necessarily imply that there are competitive
18 alternatives and an absence of market power with respect to the storage requirements
19 for operational flexibility related to the need to accommodate the variances between day
20 ahead forecasts and actual use by weather-sensitive customers.

21 The Board observed in the NGEIR decision:

22 *The public interest is multi-faceted and dynamic, but it is important to clearly identify*
23 *how the Board will assess whether the public interest will be protected by competition*
24 *if the Board refrains from regulating storage rates. ... The Board would not be fulfilling*

¹¹ It is noteworthy that retailers receive an allocation of storage equivalent to their customers allocation as in-franchise distribution customers when they provide competitive retail services.

¹² See NGEIR p. 26 (also see p. 28) Also note comment on in-franchise vs ex-franchise on page 40.

¹³ See the discussion of operational flexibility in Énergir’s Application relating to the allocation of costs and rate structure (R-3867-2013), Phase 2. For example, see the evidence of John Todd, Report on Énergir’s Cost Allocation and Pricing of Gas Supply, Transportation and Load Balancing Services and Supply of Interruptible Service.

1 *its responsibilities if it limited the review in the way suggested without considering the*
2 *full range of impacts and the potential need for transition mechanisms and other*
3 *means by which to ensure forbearance proceeds smoothly.¹⁴*

4 ...

5 *The scope of appropriate considerations is broader and includes factors related to*
6 *market signals, incentives and efficiency.*

7 *... The Board's objectives which are most directly relevant in this case are as follows:*

- 8 • *to facilitate competition in the sale of gas to users;*
- 9 • *to protect the interests of consumers with respect to prices and the reliability*
10 *and quality of gas service.*
- 11 • *to facilitate rational development and safe operation of gas storage*

12 The importance of its findings with respect to the competitiveness of the storage market
13 in establishing its approach were clearly stated in the NGEIR decision.

14 *The Board concludes that long-term consumer protection in terms of price, reliability*
15 *and quality of service is best achieved through thriving competition for the competitive*
16 *elements of the storage market and effective regulation of the non-competitive*
17 *elements of the market. The Board is of the view that refraining from rate regulation*
18 *and contract approval in the ex-franchise market has the potential to foster more*
19 *competition in the storage market, to the benefit of all customers, provided there are*
20 *clear rules and non-discriminatory access by all market participants. In a competitive*
21 *market, customers have choices, resources are distributed efficiently, and there are*
22 *incentives to innovate and respond to customer needs.¹⁵*

23 A central question in the OEB's deliberations with respect to the treatment of storage was
24 whether a distributor has access to competitive alternatives:

25 *The Board agrees that effective competitive storage options do not exist for the in-*
26 *franchise customers of Union and Enbridge. The Board has already determined that*
27 *these customers will continue to receive regulated cost-based storage rates.*

¹⁴ NGEIR Decision, p. 42.

¹⁵ NGEIR Decision, p. 48.

1 *However, Enbridge and Kingston, which are buying storage services on behalf of*
2 *their customers because they do not have sufficient storage resources of their own,*
3 *do have access to alternatives. This is as true for Enbridge as it is for GMi. Therefore,*
4 *the question is whether Enbridge (for its storage needs beyond the capacity of*
5 *Tecumseh) and Kingston (for all of its storage needs) should be entitled to cost-based*
6 *storage rates from Union.*¹⁶

7 In the current context with competition in the provision of distribution service in new
8 communities, it is evident that the OEB did not address the question of whether new
9 distributors have access to competitive alternatives for the specific storage services that
10 are required for operational flexibility as distinct from both seasonal storage service and
11 load balancing over longer time periods.

12 **Conclusion: The OEB’s NGEIR Decision concluded in part, “that long-term**
13 **consumer protection in terms of price, reliability and quality of service is best**
14 **achieved through thriving competition for the competitive elements of the storage**
15 **market and effective regulation of the non-competitive elements of the market.”**

16 **The storage requirements of new distributors serving previously unserved**
17 **communities in Ontario was not explicitly addressed in the NGEIR decision, nor**
18 **did the decision address the availability of competitive options for specific storage-**
19 **based services such as daily load balancing for operational flexibility.**

20 **It follows that if the storage services required for the daily load balance to support**
21 **operational flexibility are not available on a competitive basis, the principles and**
22 **precedents established by the NGEIR decision would require that those storage**
23 **services should be subject to regulation that protects consumers.**

24 **2.2.2 GENERIC COMMUNITY EXPANSION PROCEEDING (EB-2016-0004)**

25 In the Application, Enbridge’ evidence states:

26 *On November 17, 2016 the Ontario Energy Board (“Board”) issued its Decision with*
27 *Reasons in EB-2016-0004, a generic proceeding initiated by the Board in order to*

¹⁶ NGEIR Decision, p. 61.

1 *consider what mechanisms may be used to recover the costs of expanding natural*
2 *gas service to Ontario communities that do not currently have access to natural gas.*
3 *The Board's Decision communicated changes to the Board's approach for assessing*
4 *expansion into new **which served to facilitate competition** between natural gas*
5 *distributors to provide service.¹⁷ [emphasis added]*

6 The referenced section of the Generic Community Expansion Decision and Reasons, EB-
7 2016-0004 ("Generic Decision") states:

8 *A framework that employs new rate zones would also facilitate the entry of new*
9 *participants and **allow for competition**. This would be accomplished by considering*
10 *the proposed rates for a potential service area in a leave to construct hearing.*
11 *Alternative competing bids could be considered by the OEB at the same time. **The***
12 ***awarding of Franchise rights and Certificates can be considered in conjunction***
13 ***with the Leave to Construct application putting all on a level playing field.**¹⁸*
14 *[emphasis added]*

15 This comment appears to me to make it clear that the Generic Decision expressed the
16 OEB's intent of ensuring that new distributors are competing on a level playing field with
17 existing distributors for the right to provide service to new regions.

18 Subsequent statements in the Generic Decision apply very directly to the circumstances
19 before the OEB in the current proceeding:

20 *The issue of advancing upstream system expansion and enhancements should be*
21 *considered in every case where they are shown to exist. **The cost of upstream***
22 ***enhancements that any project would bear must be the same regardless of the***
23 ***utility proposing the expansion. This will allow for proper comparison of***
24 ***competing bids, again leveling the playing field.***

25 ***Any leave to construct application for community expansion projects should***
26 ***provide separate costs for the transmission and distribution segments of the***
27 ***project as well as any upstream reinforcement costs. This information would also***

¹⁷ Ex. A/T3/A1/P1. The quote footnotes EB-2016-0004 Generic Community Expansion Proceeding, Decision with Reasons, pp.19-20.

¹⁸ Generic Decision, p. 19

1 *allow the OEB to better evaluate alternatives including LNG or compressed natural*
2 *gas.*¹⁹ [emphasis added]

3 Further reinforcing the importance of ensuring that a level playing field is maintained
4 between existing and new distributors, the Generic Decision included a section entitled
5 “Facilitation of Competition” at pages 24-28. The OEB stated in the Summary of Findings:

6 *Where funding from municipal, provincial, or federal sources is available, the OEB*
7 *expects the utilities and the communities to use this funding to lower the cost to*
8 *customers. The OEB will also make changes to its processes relating to the*
9 *granting of Municipal Franchise Agreements and Certificates of Public*
10 *Convenience and Necessity that it expects will facilitate competition for gas*
11 *distribution to new communities.*²⁰ [emphasis added]

12 **Conclusion:** The OEB Decision in the Generic Community Expansion Hearing very
13 deliberately sets out the competitive framework within which community
14 expansions are intended to operate. A central feature of this competitive framework
15 is a level playing field with respect of the cost of upstream enhancements. The
16 Board explicitly recognized that in stating: “The cost of upstream enhancements
17 that any project would bear must be the same regardless of the utility proposing
18 the expansion. This will allow for proper comparison of competing bids, again
19 leveling the playing field.” The proposals of Enbridge Gas in this Application
20 violate this explicit statement of regulatory policy, as detailed above.

21 **2.2.3 THE ACCESS TO NATURAL GAS ACT, 2018**

22 The *Access to Natural Gas Act, 2018* which was given royal assent on December 6, 2018
23 amended the *Ontario Energy Board Act, 1998* to provide a funding mechanism that would
24 be available to support community expansions projects. The funding is available to both
25 existing and new distributors for qualifying projects. The existing OEB processes are
26 being used to identify the qualifying projects.

¹⁹ Generic Decision, p. 20.

²⁰ Generic Decision, p. 4.

1 2.2.4 MINISTERS' SECTION 35 LETTER TO THE OEB, DECEMBER 12, 2019

2 The Honourable Greg Rickford, Ontario's Minister of Energy, Northern Development and
3 Mines and the Honourable Bill Walker, the Associate Minister of Energy jointly issued a
4 letter to Mr. Robert Dodds, the Vice-Chair of the Ontario Energy Board requiring "the
5 Ontario Energy Board ("Board") to examine and report back to the Minister of Energy,
6 Northern Development and Mines ("Ministry") with information on potential projects to
7 expand access to natural gas distribution systems for new customers".

8 More specifically, the Board was directed "to apply its expertise in developing a process
9 to solicit information from proponents about proposed natural gas distribution expansion
10 projects, and to analyze the proposed projects with a focus on assessing whether they
11 can be implemented substantially as proposed." The letter identified seven items that the
12 Board's approach should consider.

- 13 1. *The number of customers (in terms of customer count, volume of gas to be*
14 *distributed, and customer type) that would be connected by each proposed*
15 *project;*
- 16 2. *The total cost of each proposed project, as well as the dollar amount of support*
17 *needed for each proposed project to meet the Board's profitability threshold;*
- 18 3. *The proposed construction start date and construction period for each*
19 *proposed project, as the Government's focus is on projects that can*
20 *reasonably be expected to start construction by 2023, allowance being made*
21 *for the timelines typically applicable to the process of obtaining regulatory*
22 *approvals;*
- 23 4. *The project proponent's demonstrated experience, technical expertise and*
24 *financial ability to build and operate a natural gas distribution system;*
- 25 5. *Support for the proposed project from Band Council(s) and/or local*
26 *government, as applicable, demonstrated through a written expression of*
27 *support and/or a commitment to financial support;*

1 6. *If a proposed project is in an area where a Certificate of Public Convenience*
2 *and Necessity exists, the proponent must be the Certificate holder unless the*
3 *Certificate holder does not propose a project for the area; and*

4 7. *The extent to which the project proponent expects that the proposed project*
5 *would reduce the household energy cost burden in the project area.*

6 Implicit in this requirement of the Board is the expectation that the Board will continue to
7 facilitate competition for the provision of natural gas distribution service for new customers
8 in locations where natural gas is not currently available. Most obviously, by stating that
9 “in an area where a Certificate of Public Convenience and Necessity exists, the proponent
10 must be the Certificate holder unless the Certificate holder does not propose a project for
11 the area” the Minister implies that in an area where a Certificate of Public Convenience
12 and Necessity does not exist, there is no restriction on the proponents that may compete
13 for the right to undertake a community expansion project in a currently unserved location.
14 The Board should identify potential natural gas expansion projects that qualify for financial
15 support in accordance with the mechanism that was established by the *Access to Natural*
16 *Gas Act, 2018* based on the identified criteria.

17 In my view, this action demonstrates that the Province is relying on the OEB’s expertise
18 and the competitive processes that it has adopted to achieve the policy objective of
19 improve access to natural gas in currently unserved communities.

20 [OEB RESPONSE, DECEMBER 19, 2019](#)

21 The Board responded to the Minister’s letter by issuing a letter on December 19, 2019
22 regarding “Potential Projects to Expand Access to Natural Gas Distribution” per Ontario
23 Energy Board File No. EB-2019-0255. The Board’s letter set out four additional
24 considerations that are designed to Implement the *Access to Natural Gas Act, 2018* in a
25 way that reinforces the competitive approach that the Board established through its
26 decision in the Generic Community Expansion proceeding (EB-2016-0004).

1 **Conclusion: The Government of Ontario and the OEB are currently engaged in**
2 **processes intended to utilize the OEB’s established framework (which relies on**
3 **competitive forces) to expand access to natural gas to regions of Ontario that are**
4 **not currently served.**

5 **As the OEB’s Generic Decision makes clear, effective competition requires a level**
6 **playing field. Any tilt in the competitive environment against new competitors will**
7 **not further the statutory objective of providing “long-term consumer protection in**
8 **terms of price, reliability and quality of service.” The absence of a level playing**
9 **field will dissuade new distributors from pursuing opportunities to expand service**
10 **to new communities, resulting in fewer communities being served and/or higher**
11 **prices for those that are served as a result of the *Access to Natural Gas Act, 2018***
12 **and the related policy initiatives.**

13 **2.3 GAS STORAGE, LOAD BALANCE AND OPERATIONAL FLEXIBILITY**

14 In a current proceeding before the Régie de l’énergie²¹, Énergir has filed evidence that
15 separates the traditional load balancing function into two separate functions: seasonal
16 storage and operational flexibility. Operational flexibility is the storage-based service
17 required to respond to the within-day variances that will inevitably occur, forcing a
18 distributor to increase or decrease the scheduled deliveries during the day to avoid
19 unacceptable end of day imbalances between deliveries and actual consumption by its
20 customers.²²

21 This conceptual distinction has been made by Énergir as a result of the evolution of the
22 North American natural gas market that makes it relevant to distinguish between gas
23 supply tools such as transportation and storage and gas supply services that include
24 seasonal load balancing and operational flexibility. These gas supply functions may utilize

²¹ Énergir - Demande relative au dossier générique portant sur l'allocation des coûts et la structure tarifaire de Gaz Métro, R-3867-2013, Phase 2.

²² For a detailed examination of Énergir's see the Elenchus report prepared for the Régie, [Report on Énergir's Cost Allocation and Pricing of Gas Supply, Transportation and Load Balancing Services and Supply of Interruptible Service](#), 17 October 2019 (“Elenchus Report”).

1 different possible combinations of the available gas supply tools. Hence, the tools that
2 can be used to provide operational flexibility depend on the details of the terms and
3 conditions of the various storage and transportation tools that are available. For example,
4 available storage cannot be used to provide operational flexibility unless appropriate intra-
5 day nomination rights provide the required flexibility.

6 The Elenchus Report notes that operational flexibility represents only 1.4% of Énergir's
7 total load balancing costs²³.

8 Since operational flexibility requires changes to a distributor's day-ahead nominations that
9 are not permitted within the current transportation nomination windows, operational
10 flexibility is currently bundled with transportation service. Enbridge's proposals would
11 unbundle this service and force new distributors to contract for it as a new service from
12 Enbridge on an unregulated basis. No entity other than Enbridge has the information and
13 ability to accommodate imbalances within the time frame of the nomination window;
14 hence, this would be a *de facto* monopoly service.

15 In my view, distinguishing operational flexibility as a service that is separate from other
16 storage-based services is important in the current proceeding. While the OEB's finding in
17 the NGEIR decision that storage is competitive remains relevant for the storage services
18 that have been available in the Ontario market to date, Enbridge's proposal to introduce
19 Rate M17 as a mandatory option that does not include operational flexibility (daily
20 balancing) makes it necessary to consider the competitiveness of the operational
21 flexibility services that will be required as a result.

22 As the ENGLP company evidence filed contemporaneously with this evidence
23 demonstrates, any gas distributor that must rely on Enbridge's Rate M17 service (i.e., a
24 new entrant) will not have access to an operational flexibility service on a competitive
25 basis. Existing distributors, however, will continue to have access to alternatives to M17
26 that include operational flexibility service. As a consequence, new distributors will be
27 required to incur additional costs that will have the effect of tilting the competitive playing
28 field for community expansions in favour of existing distributors.

²³ Elenchus Report, p. 31.

1 **Conclusion: The NGEIR decision introduced cost-based storage for storage-based**
2 **services such as seasonal load balancing. This decision was based on the carefully**
3 **examined finding that where market-based pricing storage was permitted,**
4 **competitive storage options were available. In other words, market-priced services**
5 **were limited to storage services that were workably competitive. The OEB did not**
6 **find that storage for daily load balancing was available on a competitive basis and**
7 **it did not introduce market based pricing for daily load balancing, Under existing**
8 **services distributors that require daily load balancing for operational flexibility are**
9 **able to obtain it on a bundled basis with transportation service. Under Enbridge's**
10 **proposals in this proceeding, new distributors would be denied this non-**
11 **competitive service, forcing them to acquire the services at unregulated prices**
12 **although they are not available on a competitive basis.**

13 **3 PROPOSALS OF ENBRIDGE IN THE APPLICATION**

14 Enbridge Gas' Owen Sound Reinforcement Project represents the first instance of an
15 existing Ontario integrated natural gas storage, transportation and distribution utility
16 providing storage and transportation services a new distributor in the Province as the
17 result of a competitive process.²⁴ Although the origins of the ENGLP South Bruce project
18 pre-dates both the *Access to Natural Gas Act, 2018* and the Ministers' Section 35 Letter
19 to the OEB, December 12, 2019 ("Ministers' Letter"), it nevertheless has become the *de*
20 *facto* test case for the approach that Enbridge will be permitted by the OEB to take when
21 providing storage and transportation services to ENGLP or any other new entrant to the
22 Ontario natural gas distribution market in response to the initiatives of the Province.

23 The priority in establishing the rules for providing service to new distributors should be to
24 ensure consistency with the principle of a level playing field for all distributors interested
25 in serving communities that do not currently have natural gas distribution service.

²⁴ It should be noted, however, that Enbridge has recently provided similar service to Certarus. Certarus receives bundled cost-based service from Enbridge Gas so that it can distribute gas to its CNG customers. No reason has been provided for providing service on a more favourable basis for a CNG serving Ontario gas customers than a competitive natural gas pipeline distributor.

1 This reality has the important implication that it would not be appropriate to adhere
2 rigorously to past practices if those past practices are in conflict with the principles or the
3 policy objectives of the Generic Decision and the Ministers' Letter. Hence, the priority in
4 establishing the rules for providing service to new distributors should be to ensure
5 consistency with the principle of a level playing field for all distributors that are interested
6 in serving communities that do not currently have natural gas distribution service.

7 **3.1 ENBRIDGE RATE PROPOSALS**

8 In its current application Enbridge is proposing to restrict access to the existing Rate M9
9 and Rate T3 services such that they will not be available to new distributors providing
10 service to new communities. Instead, new distributors providing service to new
11 communities will be required to contract for transportation service under the new,
12 proposed Rate M17.

13 The key features of the proposed Rate M17 transportation service for gas distributors are:

- 14 • It includes transportation from Dawn, Kirkwall or Parkway (the points of receipt) to
15 the customer's custody transfer point(s) with Enbridge' delivery area. The service
16 provides transportation within Union South to transport gas East of Dawn on the
17 Dawn Parkway system in combination with transportation on other Union South
18 transmission lines to the delivery area.
- 19 • It is a firm point-to-point transportation service between an applicable receipt point
20 and the delivery area. Similar to Enbridge's other ex-franchise transportation
21 services under Rate M12 and Rate C1, a Rate M17 customer (also referred to as
22 a shipper), will contract with Enbridge to transport gas from Dawn, Kirkwall or
23 Parkway to the delivery area. The ability to choose a path provides added flexibility
24 and choice for the shipper.
- 25 • Rate M17 would manage their own gas supply arrangements and competitive
26 storage services which are available within the market at market-based rates.

27 The chart below compares the key features of these services.

1 **Union South Rate Zone Service Offerings (Ex. B/T1/S1)**

Service	Key Terms & Conditions	Current Availability		Proposed Availability	
		Existing Distributors	New Distributors	Existing Distributors	New Distributors
Rate M9	Bundled delivery service Optional gas supply Regulated storage, cost-based rates	✓	✓	✓	
Rate T3	Semi-unbundled storage and transportation service Regulated storage, cost-based rates	✓	✓	✓	
Rate M12 Rate C1	Ex-franchise Receipt/delivery points along Dawn Parkway System	✓	✓	✓	✓
Rate M17	Unbundled delivery service No optional gas supply No regulated storage at cost-based rates			✓	✓

2 **3.2 THE ENBRIDGE CIAC PROPOSAL**

3 Enbridge is proposing to charge ENGLP a CIAC in the amount of \$5.34 million in order
4 to provide capacity in the Owen Sound System to service ENGLP²⁵. Enbridge has neither
5 applied the three stage EBO 134 test either in compliance with EBO 134, nor has
6 Enbridge applied this test on a consistent fashion in other similar situations.

²⁵ Exhibit D Tab 2 Schedule 3 paragraph 8

1 **3.3 THE ENBRIDGE METER STATION COST PROPOSAL**

2 ENGLP has been required to enter into an agreement with Enbridge to cover the full cost
3 of Enbridge's meter station and related facilities at Dornoch before Enbridge would
4 commence any substantial work on the meter station. ENGLP has paid \$4.02 million to
5 date to cover these costs.

6 **4 COMPETITIVELY NEUTRAL OPTIONS**

7 Enbridge's proposals in this Application related to the Owen Sound Reinforcement
8 Project, if accepted by the OEB, will result in four inequities between incumbent
9 distributors and new entrants that are competing to provide distribution services to new
10 areas under the regime envisioned by the Board's decision in the Generic Community
11 Expansion proceeding (EB-2016-0004) and the subsequent *Access to Natural Gas Act,*
12 *2018*. The playing field in the new competitive environment will only be level if OEB
13 decisions that pre-date the competitive environment are applied in a manner that is
14 consistent with the current competitive vision.

15 The Enbridge proposals in this Application, if accepted by the OEB, will establish a
16 precedent that would provide a competitive advantage to the incumbent distributor in any
17 future competitive processes to serve new regions. The competitive advantage would
18 exist in at least four ways:

19 1. Enbridge has required ENGLP to pay contribution in aid of construction ("CIAC") for
20 the expansion of transmission facilities. Based on Enbridge's past practice when it has
21 undertaken similar expansions of its transmission facilities, its standard practice has
22 been to roll the transmission-related expansion costs (capital and operating) into its
23 revenue requirement. The resulting increase in its annual revenue requirement would
24 be recovered from its entire customer base, including other embedded distributors.
25 Therefore, if the proposals of Enbridge Gas are accepted in this case, it will establish
26 a precedent that will force competitors to treat these costs as system expansion costs
27 (to be collected solely from customers in the new service area) while allowing
28 Enbridge to treat them as system-wide costs (to be collected from all customers). The

- 1 effect would be that the objective of maintaining a level playing field that was explicitly
2 included in the Generic Decision would be violated.
- 3 2. Enbridge has required ENGLP to pay the full cost of station facilities at Dornoch.
4 However, there is no established OEB rule or practice that would preclude Enbridge
5 from rolling these costs into its rate base but requiring new entrants to recover the
6 same costs from the customers in the new community in future competitive process.
- 7 3. Enbridge's proposal that a new entrant distributor must bear the full cost associated
8 with daily load balancing, whereas the incumbent distributor would utilize daily load
9 balancing at no incremental cost to serve the new location will further exacerbate the
10 inequity between existing and new distributors.
- 11 4. Enbridge's proposal that a new distributor must utilize market storage for seasonal
12 load balancing although an incumbent distributor competing to provide service to the
13 same location would have access to cost-based storage to support the same service
14 area also creates an inequity that tilts the playing field in favour of existing
15 distributors.²⁶
- 16 Approaches to avoid or minimize tilting the competitive playing field as between
17 incumbent and new distribution companies, while maintaining consistency with prior
18 practices and OEB decisions, are presented in the following sections.

19 **4.1 A COMPETITIVELY NEUTRAL APPROACH TO CONTRIBUTION IN AID OF** 20 **CONSTRUCTION**

21 In order to ensure competitive neutrality in relation to the costs of transmission system
22 upgrades or reinforcement projects required to provide access to upstream natural gas
23 transmission facilities for newly served areas, equivalent costs should be charged to the
24 selected gas distributor (whether it is the incumbent or a new entrant).

²⁶ It is not yet clear how the conditions that applied to Union and Enbridge, prior to their merger, will be applied in the future. Those conditions are the 100 PJ limit in Union's case and the blended cost of cost and market-based storage above the limits.

1 Whether a CIAC is charged would be determined on the basis of the application of the
2 entire EBO 134 three-stage test. Enbridge Gas' (and former Union Gas') past practice
3 appears to be that no CIAC is levied even when the PI from application of only stage 1 is
4 very low, provided that there will be no undue rate impact for existing customers and that
5 the resulting NPV of the project from the application of the three stage analysis supports
6 the project. Adoption of this approach will require that the Board clearly define what
7 constitutes "undue impact" in this circumstance. Based on the Panhandle Expansion
8 precedent,²⁷ the definition of an undue impact would be something in excess of 1.2% of
9 an end use customer's bill. An exception may be justified and CIAC charged, in the event
10 that the upgrade is a dedicated facility for a single customer.

11 In recognition of the Ontario Government policy direction that led to the introduction of the
12 *Access to Natural Gas Act, 2018*, and the Ministers' Letter to the OEB on December 12,
13 2019, it would also be consistent for the OEB to adopt a policy of requiring no CIAC in
14 relation to projects that are facility community expansions that are supported by the
15 funding that was established by *Access to Natural Gas Act, 2018*. Ensuring there is no
16 CIAC charged regardless of the distributor undertaking the community expansion would
17 not only ensure that there is no tilt in the competitive playing field due to unequal CIAC
18 treatment, but it would also contribute to improving the economics of community
19 expansion projects.

20 **4.2 A COMPETITIVELY NEUTRAL APPROACH TO STATION COSTS**

21 The recovery of station costs from ENHLP is being determined in a manner consistent
22 with the common practice of the Enbridge predecessor companies and in a manner
23 consistent with its rate making practices. To ensure there is a level competitive playing
24 field, equal treatment should be afforded to community expansion projects regardless of
25 whether they are undertaken by existing distributors or new distributors.

²⁷ Ontario Energy Board, Decision and Order, EB-2016-0186, Union Gas Limited, Application for approval to construct a natural gas pipeline in the Township of Dawn Euphemia, the Township of St. Clair and the Municipality of Chatham-Kent and approval to recover the costs of the pipeline, February 23, 2017.

1 The Enbridge proposal for a new distributor to pay the full costs of the station facilities is
2 consistent with the approach Union adopted for the treatment of incremental upstream
3 station costs in its EB-2015-0179 application for LTD approval to serve four new
4 communities and also in the recent EB-2019-0187 to serve the Saugeen FN.

5 To ensure consistency in the future, this issue should be addressed in filing requirements
6 for leave to construct applications under Section 90 of the *Ontario Energy Board Act*.
7 However, in the absence of filing guidelines addressing this issue, it will be desirable for
8 the OEB to establish an approach in the current proceeding that endorses the principle
9 of a level playing field and ensures that Enbridge is not recovering costs from EPCOR
10 that it will not recover from its own future community expansion projects.

11 A level playing field would be maintained if station costs incurred for community
12 expansion projects are included in the determination of the CIAC as discussed above.

13 **4.3 A COMPETITIVELY NEUTRAL APPROACH TO OPERATIONAL FLEXIBILITY** 14 **SERVICE (DAILY LOAD BALANCING)**

15 Existing distributors that are successful in being selected to supply gas to a new
16 expansion area will not be required to have any incremental additional cost for the storage
17 and transmission capacity required to provide the daily load balancing needed for
18 operational flexibility for the customers of a community expansion assessed to the project.
19 This service is embedded in the storage and transportation capacity that they have a right
20 to at the present time and will continue to have a right to since they will continue to utilize
21 Rate M9 and Rate T3 services under the Enbridge proposal.

22 The most direct way to avoid tilting the competitive playing field that would result if the
23 OEB were to accept the proposals of Enbridge Gas in the current Application would be to
24 reject the proposal that Rate M9 and Rate T3 services will not be available to new
25 distributors serving new communities. This approach would imply that as a matter of
26 policy, these community expansion projects should have access to cost-based storage
27 on the same basis as existing distributors that are competitive alternatives.

28 In the alternative, a minor adjustment to the Rate M17 service as proposed would address
29 the competitive inequity that would result from the introduction of Rate M17 with the terms

1 and conditions proposed by Enbridge. Enbridge is proposing that Rate M17 service will
2 not include daily load balancing. The OEB could amend this limitation and require that
3 daily load balancing be bundled with the service, on a basis comparable to the
4 transportation services that are available to Enbridge to serve customers of community
5 expansion projects that it undertakes. The rationale for this refinement of the NGEIR
6 policy to require new distributors to pay market-based rates for storage would be that the
7 market for storage with terms and conditions that would make it appropriate to use for
8 daily load balancing is not available in the competitive storage market.

9 **4.4 A COMPETITIVELY NEUTRAL APPROACH TO SEASONAL STORAGE**

10 In cases of natural gas distribution service being extended to a new service area all
11 parties should have access to the storage required for seasonal balancing on the same
12 terms of conditions. The terms and conditions could be either:

- 13 • Cost-based storage could be allocated to the distributor on standard terms and
14 conditions. This approach would deviate from the strict application of the NGEIR
15 approach to allocating market-based storage but would serve to avoid the
16 incremental cost of market-based storage being included in the rates required in
17 areas being served as a result of the *Access to Natural Gas Act, 2018*.
- 18 • All competing distributors could be required to pay the market price for the storage
19 required to meet the seasonal balancing requirements of the new service area.
20 This approach would require stand-alone rate that include the cost of storage at
21 market rates for any competitor that is an existing utility, as defined by the NGEIR
22 decision.

APPENDIX A

RESUMÉ OF JOHN TODD

APPENDIX A

JOHN D. TODD



34 King Street East, Suite 600 | Toronto, ON M5C 2X8 | 416 348 9910 | jtodd@elenchus.ca

PRESIDENT

John Todd has specialized in government regulation for over 35 years, addressing issues related to price regulation and deregulation, market restructuring to facilitate effective competition, and regulatory methodology. Sectors of primary interest in recent years have included electricity, natural gas and the telecommunications industry. John has assisted counsel in over 250 proceedings and provided expert evidence in over 100 hearings. His clients include regulated companies, producers and generators, competitors, customer groups, regulators and government.

PROFESSIONAL OVERVIEW

Founder of Elenchus Research Associates Inc. (Elenchus) 2003

- ERAI was spun off from ECS (see below) as an independent consulting firm in 2003. There are presently twenty-five ERAI Consultants and Associates. Web address: www.elenchus.ca

Founded the Canadian Energy Regulation Information Service (CERISE) 2002

- CERISE is a web-based service providing a decision database, regulatory monitoring and analysis of current issues on a subscription basis. Staff are Rachel Chua and rotating co-op students. Web address: www.cerise.info

Founded Elenchus (Econalysis) Consulting Services, Inc. (ECS) 1980

- ECS was divested as a separate company in 2003

EDUCATION

1975 Masters of Business Administration (Economics and Management Science), University of Toronto

1972 Bachelors of Applied Science (Electrical Engineering), University of Toronto

PRIOR EMPLOYMENT

Ontario Economic Council, Research Officer (Government Regulation) 1978 - 1980

Research Assistant, Univ. of Toronto, Faculty of Management Studies 1973 - 1978

Bell Canada, Western Area Engineering 1972 - 1973

REGULATORY/LEGAL PROCEEDINGS

Provided expert evidence or assistance to the applicant or another participant:

Before the Ontario Energy Board

John Todd has provided expert assistance in more than 65 proceedings before the Ontario Energy Board from 1991 to 2019. He has presented evidence in more than 25 of these cases. Recent cases include rate applications for the EPCOR Natural Gas LP (and the predecessor company NRG) and evidence on the *Cost Allocation and Rate Design for the IESO Usage Fee* for the Independent Electricity System Operator.

Before the Public Utilities Board of Manitoba

John has provided expert assistance in a total of 46 proceedings before the Public Utilities Board of Manitoba from 1990 to 2017. He has presented evidence in 23 of these cases. He was retained by the Manitoba Public Utilities Board as an Independent expert consultant to review aspects of Manitoba Hydro's Needs for and Alternatives to (NFAT) its Preferred Development Plan. He is currently serving as a Board advisor for the Review of Efficiency Manitoba's 2020-2023 DSM Plan.

Before the British Columbia Utilities Commission

John has provided expert assistance in more than 30 proceedings before the British Columbia Utilities Commission from 1993 to 2018. He has presented evidence in ten cases. Recently he was retained (with Michael Roger) by the BCUC as its independent expert consultant to review FortisBC Energy Inc. cost allocation and rate design methodology.

Before the Régie de l'énergie

John has provided expert assistance in more than ten proceedings before the Régie de l'énergie from 1998 to 2019. He has presented evidence in nine of these cases. He was retained with Cynthia Chaplin to prepare *Report for the Régie de l'énergie, Performance Based Regulation: A Review of Design Options as Background for the Review of PBR for Hydro Quebec Distribution and Transmission Divisions*. He is currently engaged in another cost allocation review project for the Régie as an independent expert.

Before the Alberta Utilities Commission (and formerly the Alberta Energy and Utilities Board)

John has provided expert assistance in of four proceedings before the Alberta Utilities Commission and its predecessor since 2000. He is currently engaged in rate design work for an Alberta utility.

Before the Newfoundland & Labrador Board of Commissioners of Public Utilities

John has provided expert assistance in a total of nine proceedings from 2005 to 2015. He has presented evidence in three cases. The most recent proceeding he participated in was the *Newfoundland Power, 2016 Deferred Cost Recovery Application* case.

Before the New Brunswick Energy and Utilities Board

John has provided expert assistance in a total of nine proceedings before the New Brunswick Energy and Utilities Board from 2007 to 2019. He has presented evidence in three cases. The most recent proceeding he participated in was the *2019-20 General Rate Application*.

Before the Nova Scotia Utility and Review Board

John has provided expert assistance in a total of nine proceedings before the Nova Scotia Utility and Review Board from 2008 to 2016. He has presented evidence in four cases. The most recent proceeding he participated in was *Efficiency One, Updated Cost Allocation Methodology*.

Before the National Energy Board (NEB)

John has provided expert assistance in one proceeding before the NEB, during 1999. The proceeding was in regards to *BC Gas, Southern Crossing Project*.

Before the Canadian Radio-television and Telecommunications Commission (CRTC)

John has provided expert assistance in 47 proceedings before the Canadian Radio-television and Telecommunications Commission from 1990 to 2016. He has presented evidence in 13 of these cases. The most recent proceeding he participated in was a *Review of Basic Telecommunications Services, Consultation CRTC 2015-134*.

Before the Ontario Securities Commission

John provided expert assistance on behalf of the Director of Investigation and Research, Combines Investigation Act in four proceedings before the Ontario Securities Commission from 1981 to 1985. He presented evidence in each case including evidence on Industry structure and the form of regulation in the OSC's *Securities Industry Review*.

Before the Ontario Municipal Board

John has provided expert evidence and assistance in two proceedings before the Ontario Municipal Board in 1992 and 1995. In 1995, he assisted in a case regarding an *Appeal of Boundary Expansion by Lincoln Hydro and Electric Commission*, with an affidavit prepared on the tests for boundary expansions.

Before the Supreme Court of Ontario

John has presented evidence in one proceeding before the Supreme Court of Ontario, in 1990. The case related to the *Challenge of the Residential Rent Regulation Act (1986) under the Canadian Charter of Rights and Freedoms*. Evidence: The impact of rent regulation on Ontario's rental housing market.

Before the Saskatchewan Court of Queen's Bench

John has presented evidence in one proceeding before the Saskatchewan Court of Queen's Bench, in 1993. The evidence was regarding market dynamics and competition policy. John (with Michael Roger) has also conducted the two most recent reviews of SaskPower's cost allocation methodology and presented the results to the Saskatchewan Rate Review Panel.

Non-Hearing Processes

John has provided expert assistance more than non-hearing processes since 1997 to the following Ontario Energy Board, British Columbia Gas, the British Columbia Utilities Commission, the New Brunswick Department of Energy, SaskPower, the Government of Vietnam, and more.

Commercial Arbitrations and Lawsuits

John has provided expert assistance in six commercial arbitrations and lawsuits between 2004 and 2015.

Facilitation Activities

John has undertaken numerous strategic planning and visioning sessions (some with co-facilitators) for the Executive and/or Board of Directors of regulated companies between 2000 and 2019. He has also facilitated six stakeholder processes for regulators and utilities from 2000 through 2017.

Other Regulatory Issues Researched

John has completed (with collaborators in some cases) over 20 studies for industry associations, regulators, utilities and other entities outside of hearing processes

SELECTED PRESENTATIONS

- Utility Cost Recovery in an Era of Ageing Infrastructure, Technological Change and Increasing Customer Service Expectation, CEA Legal Comm. & Regulatory Innovations Task Group (June 2016)
- Productivity Benchmarking Panel at the CEA Electric Utility Workshop (May 2016)
- Funding Utility Innovation at the CEA Electric Utility Workshop (May 2016)
- MEARIE Training Program, Regulatory Essentials for LDC Executives (several years)
- Issue in Regulatory Framework for Tenaga Nasional Berhad, Indonesia (with Cynthia Chaplin & London Economics) (2015)
- Witness Training for electric utilities 2014 - 2018
- "Innovations in Rate Design", CAMPUT Training Session, Annually 2010-2013
- "Cost of Service Filing Requirements" (2010) 2nd Annual Applications Training for Electricity Distributors, Society of Ontario Adjudicators and Regulators in cooperation with the OEB
- "Green Energy Act" (2010) 2nd Annual Applications Training for Electricity Distributors, Society of Ontario Adjudicators and Regulators in cooperation with Ontario Energy Board
- "Rate Design", CAMPUT Training Session, Annually 2009- 2013
- "How to Build Transmission and Distribution to Enable FiT: The Role of Distributors", EUCL Conference on Feed in Tariffs, Toronto, Sept. 2009
- "Distributor Mergers and Acquisitions: Potential Savings", 2007 Electricity Distributors Assoc.
- "Beyond Borders" Regulating the Transition to Competition in Energy Markets (with Fred Hassan), EnerCom Conference March 2006.

SELECTED OTHER ACTIVITIES

- Chairman of the Board of Directors of the Ontario Energy Marketers Association (formerly the Direct Purchase Industry Committee) and Executive Director of the Association.
- Former invited participant in the Ontario Energy Board's External Advisory Committee.
- Former Member of the Board of Directors of East Toronto Community Legal Services.
- Organizing Committee for the Concert for Inclusion in support of ParaSport Ontario
- Numerous appearances on CBC radio and television commenting on energy industry issues, competition, regulation and mergers in the Canadian economy.

CLIENTS

Over seventy private sector companies, including utilities

Fifteen industry and other associations

Over thirty 30 consumers' associations and legal clinics

Government

- Five Regulatory Tribunals
- Six Federal departments
- Fourteen Provincial departments, commissions and agencies
- Thirteen municipal and other departments/entities

For John Todd's complete curriculum vitae, please visit: www.elenchus.ca

APPENDIX B

OEB FORM A: ACKNOWLEDGEMENT OF EXPERT'S DUTY

FORM A

Proceeding: EB-2018-0183

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is John D. Todd. I live at Toronto, in the province of Ontario.
2. I have been engaged by or on behalf of EPCOR Natural Gas Limited Partnership to provide evidence in relation to the above-noted proceeding before the Ontario Energy Board.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date January 10, 2020



Signature