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March 6, 2020

Sent by Electronic Mail, Courier and RESS Electronic Filing

Ms. Christine E. Long
Registrar and Board Secretary
Ontario Energy Board
27-2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Long:

Re: EB-2019-0183: Enbridge Gas Inc. (Enbridge)–Rate M17 and Owen Sound Reinforcement Project Leave to Construct Application – EPCOR Natural Gas Limited Partnership (ENGLP) Written Submission

In accordance with Procedural Order No. 2, dated December 12, 2019, enclosed please find ENGLP's written submission in the above-noted proceeding.

The submission has been filed electronically through the Board's RESS.

Sincerely,

[Original Signed By:]

Bruce Brandell
Director
EPCOR Utilities Inc.
bbrandell@epcor.com
(780) 412-3720

Enclosures

cc: All parties to EB-2019-0183

IN THE MATTER OF the *Ontario Energy Board Act, 1998,* S.O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order or Orders approving a new firm transportation service for gas distributors under the Rate M17 rate class, effective December 1, 2019;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order or Orders modifying the applicability of the existing Rate M9 and Rate T3 rate schedules for existing gas distributors;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order or Orders granting leave to construct natural gas pipelines and ancillary facilities in the Municipality of West Grey and the Township of Chatsworth;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order or Orders approving the form of various land agreements.

WRITTEN SUBMISSION

EPCOR NATURAL GAS LIMITED PARTNERSHIP ("ENGLP")

EB-2019-0183

March 6, 2020

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PART I - BACKGROUND

1. On April 12, 2018, following a competitive process in the South Bruce Expansion Proceeding,[1] EPCOR Southern Bruce Gas Inc. was selected as the successful proponent to serve the South Bruce Municipalities.[2] On November 29, 2018, the Ontario Energy Board (**"OEB"**) granted leave to transfer the resulting certificates of public convenience and necessity from EPCOR Southern Bruce Gas Inc. to EPCOR Natural Gas Limited Partnership (**"ENGLP"**).[3]

2. On August 30, 2018, in proceeding EB-2018-0244 Union Gas Limited (**"Union"**), now Enbridge Gas Inc. (**"Enbridge"**), applied to the OEB for an order or orders granting the following (the **"2018 Application"**):

(a) Approval of a new M17 firm transportation service for natural gas distributors; and

(b) Approval to modify the applicability of Union's existing Rate M9 and Rate T3 rate schedules for existing natural gas distributors.

3. ENGLP applied for and was granted intervenor status. ENGLP's involvement in that proceeding highlighted that the effect of the proposed new Rate M17 would be to make Enbridge's existing gas distribution services (for which ENGLP met the eligibility requirements) unavailable to ENGLP's South Bruce operations.[4] As an intervenor, ENGLP sought to file evidence that would identify: (a) fundamental problems with the terms of the proposed M17 service and the implications for distribution costs in new expansion areas; (b) concerns regarding rate-making principles underpinning the development of the M17 rate; (c) shortcomings with respect to the methodology used to determine any potential Contribution-in-Aid of Construction (**"CIAC"**); and

[1] EB-2016-0137/0138/0139.
[2] The South Bruce Municipalities includes the Municipality of Arran-Elderslie (excluding the geographic area of the former Township of Arran and the former Village of Tara), the Municipality of Kincardine, and the Township of Huron-Kinloss.
[3] EB-2018-0247.
[4] EPCOR Notice of Motion, December 14, 2018, page 2, para. 7.

(d) systemic problems with the proposed balancing service which could materially affect the ultimate cost of the proposed M17 service.[5]

4. On August 1, 2019, the OEB approved a request from Enbridge to withdraw the 2018 Application. Enbridge committed to filing an amended Rate M17 application, following discussions with ENGLP, with the Owen Sound Reinforcement leave to construct application.[6]

5. On August 29, 2019, Enbridge filed an application with the OEB in proceeding EB-2019-0183 seeking the following (the **"Application"**):

(a) Approval to establish a new M17 firm transportation service for gas distributors, effective December 1, 2019, and to modify the applicability of the existing Rate M9 (bundled delivery service) and Rate T3 (semi-bundled storage and transportation service) rate schedules for existing gas distributors that receive service under these rate classes.

(b) Leave to construct approximately 34 kilometers of 12 inch diameter natural gas transmission pipeline and associated facilities in the Municipality of West Grey and the Township of Chatsworth (the **"Owen Sound Reinforcement Project"**).

(c) Approval of the forms of easement agreements related to the construction of the proposed pipeline.

6. On October 1, 2019, the OEB issued a Notice of Application and Hearing. ENGLP, amongst other interested parties, applied for and was granted intervenor status.

7. If the Application is approved, ENGLP will have no option but to take the proposed new M17 service in order to serve its customers in the Southern Bruce Municipalities (and the utility would also be subject to any modifications to the applicability of the existing Rate M9 and Rate T3 services for its Aylmer operations).

[5] EPCOR Correspondence to OEB, January 15, 2019.
[6] OEB Application Closing Letter, August 1, 2019.

8. Pursuant to the OEB's Procedural Order No. 1: (a) the evidence in EB-2018-0244 was adopted into the record of this proceeding; and (b) Enbridge responded to written interrogatories from OEB Staff and intervenors.

9. Pursuant to the OEB's Procedural Order No. 2, on January 10, 2020, ENGLP filed: (a) an expert report by Mr. John Todd, Elenchus Research Associates Inc. (the **"Elenchus Report"**); and (b) the company evidence of ENGLP.

10. On February 7, 2020, ENGLP responded to written interrogatories from OEB Staff, Enbridge and intervenors regarding its filed evidence.

11. On February 21, 2020, Enbridge filed its Argument-in-Chief.

PART II – OVERVIEW

12. This is ENGLP's submission in EB-2019-0183.

13. The crux of ENGLP's argument is that Enbridge's proposed new rate M17 service is (a) anti-competitive and (b) neither compliant with regulatory requirements nor consistent with past OEB and Enbridge (including the pre-merger Union) practices. Accordingly, the proposed new M17 rate is not in the public interest, will not result in rates that are just and reasonable for customers like ENGLP that would be compelled to take the M17 service, and should not be approved as filed.

14. The Application, is fundamentally flawed in a number of critical areas, including the following:

(a) Enbridge's proposal to charge ENGLP a CIAC for the Owen Sound Reinforcement Project is anticompetitive, not supported by EBO 134 and is inconsistent with Enbridge's past (Board-approved) practices. A proper application of section 7.29 and the three-stage economic test under EBO 134 results in no CIAC owing by ENGLP.

(b) Enbridge's requirement to have ENGLP pay for the customer meter station at Dornoch is inconsistent with past practices and results in ENGLP paying for the station at Dornoch in addition to other customer stations. ENGLP should not have to pay for the meter station and Enbridge should be ordered to refund the $4.02 million already paid.

(c) Provision of end of day balancing is a monopoly service that only Enbridge can provide to ENGLP and should be an integral part of the proposed service on a cost of service basis. If the Board approves the proposed M17 service, Enbridge should to include a cost-based balancing service as an integral part of the M17 service.

(d) Enbridge's proposed modifications to the applicability of the existing M9 and T3 service to existing distributors, are inappropriate. There is no sound rate-making principle or rationale to deny ENGLP access to rates/services for which it is currently eligible, and which were in place when ENGLP competitively bid to provide service to the South Bruce Municipalities. Restricting ENGLP's access to the M9 and T3 services is anti-competitive, and Enbridge's proposal to restrict the M9 and T3 eligibility criteria should be rejected.

15. ENGLP is expected to commence service to the South Bruce Municipalities in the early spring of 2020 and it is important that the conditions of service between Enbridge and ENGLP be approved in time to allow service to commence in a timely fashion. Therefore, in the event that the OEB has not issued a decision on this proceeding within this time frame, ENGLP respectfully requests that it should have access to the current approved M9 and T3 services. This request was expressly outlined in ENGLP's company evidence,[7] which Enbridge did not oppose in its Argument-in-Chief.

16. Finally, it is notable that Enbridge chose not to address all significant aspects of ENGLP's evidence in this proceeding. In particular, Enbridge did not file rebuttal evidence with respect to the Elenchus Report, and its Argument-in-Chief was largely silent on the contents of the Elenchus

[7] EPCOR Company Evidence, January 10, 2020, pages 8-9, lines 20-2.

Report, which comprehensively outlines the anti-competitive facets of the Application. A reply argument is intended to address those issues that could not have been anticipated in Argument-in-Chief, and to reply to opposition party arguments. ENGLP expects that Enbridge's reply will not raise novel arguments that it deliberately chose not to make in Argument-in-Chief, and deny ENGLP the ability to make submissions on such arguments.

PART III – Enbridge's Proposal to Charge ENGLP a CIAC for the Owen Sound Expansion Project is Not Appropriate

a. Enbridge's Proposal is Anti-Competitive

17. Enbridge is proposing to charge ENGLP a CIAC to bring the PI of a portion of the EPCOR 'allocated' Owen Sound Reinforcement Project, up to 1.0, whereas in other transmission line expansion projects governed by EBO 134, Enbridge's practice has been to roll costs into all rates rather than charge individual customers the cost of bringing the PI of a project to 1.0. The Elenchus Report highlights the anti-competitive impacts of Enbridge's proposal:

> *Therefore, if the proposals of Enbridge Gas are accepted in this case, it will establish a precedent that will force competitors to treat these costs as system expansion costs (to be collected solely from customers in the new service area) while allowing Enbridge to treat them as system-wide costs (to be collected from all customers). The effect would be that the objective of maintaining a level playing field that was explicitly included in the Generic Decision would be violated.*[8]

b. Enbridge's Proposal to Charge a CIAC is not Supported by EBO 134

18. Enbridge has proposed that EPCOR should make a CIAC payment in the amount of $5.34 million for the Owen Sound Reinforcement Project.

19. ENGLP and Enbridge agree that section 7.29 of EBO 134 is important when considering whether a CIAC should be applied in this instance. However, when properly applied, the provision

[8] Elenchus Evidence, Section 4 Competitively Neutral Options, pages 24 - 25

does not support Enbridge's proposal to charge ENGLP a CIAC. Rather, Enbridge has misapplied and attempted to redefine the provision in a manner that blatantly ignores express requirements. Section 7.29 reads as follows:

> *The Board finds that a contribution-in-aid of construction should be required for those projects where the **sole purpose** is to supply gas into a new area **and** where the evaluation process demonstrates an undue burden on existing customers. [Underlining added]*

20. In order to justify the application of a CIAC under section 7.29 of EBO 134, it is clear that two criteria must be met: (i) the "sole purpose" of the project must be to supply gas into a new area and (ii) the evaluation process (i.e. the application of the three-stage economic test under EBO 134) must demonstrate an "undue burden" on existing customers.

21. Enbridge has failed to provide evidence to support that the "sole purpose" of the Owen Sound Reinforcement Project is to supply gas to the Southern Bruce area. On the contrary, Enbridge has indicated that only 18%[9] of the project is intended to provide capacity for ENGLP. The remaining 82% appears to be required to accommodate growth within Enbridge's service territory including one of Enbridge's own community expansion projects to serve the Saugeen First Nations[10]. Therefore, the Owen Sound Reinforcement Project is clearly not for the *sole purpose* of suppling gas to the Southern Bruce area. Section 7.29 of EBO 134 does not justify the application of a CIAC when one party accounts for a relatively small percent of the capacity provided by a project that is serving multiple areas. The request for a CIAC fails to meet the first criteria of section 7.29.

22. The second criteria deals with the evaluation process for determining the impact on existing customers and provides for a CIAC to be charged when there would otherwise be "an undue burden on existing customers". Enbridge, however, fails entirely to consider this criterion.

23. Instead, in its Argument-in-Chief, Enbridge states that "…requiring a CIAC of EPCOR which is proportionate to EPCOR's share of the costs is an appropriate application of EBO 134 that upholds important principles of utility ratemaking such as cost causation and the limiting of

[9] Exhibit I.EPCOR.2a v)
[10] ENGLP Evidence pages 18-21

cross-subsidization."[11] This approach is an attempt to redefine the EBO 134 criteria in a manner that is substantively different from what is clearly spelled-out in EBO 134, and is not reflective of past practices.

24. In applying the three-stage EBO 134 economic test Enbridge parsed out the estimated cost of ENGLP's capacity and only applied the first stage.[12] Enbridge then determined that only those costs should have a PI of 1.0 and calculated the CIAC necessary to do so. As the overall Project has a PI of 0.31, Enbridge then completed a stage 2 and 3 analysis for the remaining project costs associated with its other system growth requirements. This results in a discriminatory treatment of ENGLP, which again, is the recipient of a relatively small (18%) proportionate capacity provided by the project. ENGLP notes that in defending this discriminatory treatment, Enbridge submitted that ENGLP's requirements to serve the South Bruce area are a "primary driver" of the timing of the Project.[13] ENGLP confirms that it offered to phase-in its contractual demand over time to more closely match its 10 year forecast demand[14]. Such a phase-in could have reduced or eliminated ENGLP's capacity requirements as a driver for the timing of the project. Enbridge was unwilling to consider this option.

25. Enbridge also introduces the concept of cost causation as a rationale for proposing a CIAC. While cost causation is an important principle in the allocation of costs into rate classes within a rate case, EBO 134 does not include a process in which the costs of a transmission project can be allocated into 'buckets', and then as a next step, selectively apply only one of the three mandatory stages in analyzing those costs.

26. The Board has determined, and confirmed[15], that EBO 134 is a three-stage test and that "If a project is not acceptable because it fails stage 1, the discounted cash flow (DCF) analysis, or has significant other disadvantages, then stages two and three must be completed before the project can be said to be fully evaluated." [Emphasis added]. Furthermore, the Board has not allowed for

[11] Paragraph 20, page 6 of 23
[12] Paragraph 19, page 6 of 23
[13] Ibid
[14] ENGLP Evidence, page 14, lines 13 - 17
[15] ENGLP Response to Written Interrogatories, February 7, 2020, EP-ENGLP-4, (b) page 2 of 2

some parsing out of certain aspects of a transmission project, applying only stage one to that element and then applying stages two and three to the remaining elements of the project. If stages two and three are applied to the complete Project, without the proposed CIAC, it would have a net present value of an estimated $296 - $432 million[16], clearly not requiring a CIAC.[17]

27. As to whether or not charging ENGLP a CIAC would result in an undue burden on existing customers, Enbridge was specifically asked to provide their generic threshold test that it used to determine if a project results in an undue subsidy and how this threshold test was applied to this Project in determining that any subsidy was undue.[18] Enbridge's response did not address the question.

28. In response to Exhibit I.Staff.13 Enbridge indicated that "[w]ithout a CIAC, the remainder of EPCOR's proportionate share will be paid by Enbridge Gas customers who would then be subsidizing EPCOR's Southern Bruce customers." Enbridge seems to imply that any subsidy by existing customers constitutes an undue burden on those customers. In response to Exhibit I.EPCOR.2j) Enbridge states that not charging a CIAC would result in an increase for a Union South residential customer of approximately $0.12 or less than 0.1% of their annual bill. It is questionable whether this outcome amounts to a reasonable interpretation of "undue harm". Notably, the resulting 0.1% residential impact in this case is considerably less than other projects, such as the Panhandle Expansion[19] (at 1.2% or 12 times larger impact), where Enbridge applied EBO 134 and has not charged a CIAC.

29. Enbridge has not provided evidence that the evaluation they applied was done so on a consistent and non-discriminatory basis, and that it reasonably demonstrates an undue burden on customers. Therefore, on the evidence filed in this Application, the request for a CIAC also fails on the second element of Section 7.29.

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[16] Ibid, Staff.8(b), page 2 of 2
[17] The amount of these benefits would in fact be higher if the public interest benefits associated with ENGLP's Southern Bruce Project were also incorporated into the analysis, which is an integral part of the market being served by the Owen Sound Expansion Project.
[18] Exhibit I.EPCOR.2g)
[19] Evidence of ENGLP, Table 1, page 13

30. Section 7.29 of EBO 134 indicates that both parts of the test must be met in order for a CIAC to be required. As neither parts of the test are met, there is no basis upon which a CIAC can be applied.

c. Enbridge's Proposal to Charge a CIAC is Inconsistent with Past Practices

31. Enbridge's argument that ENGLP must pay a CIAC, to avoid existing customers subsidizing EPCOR's Southern Bruce customers, is inconsistent with its rate design for transmission lines in which costs are allocated into the asset class of Other Transmission lines. Enbridge has regularly expanded its transmission facilities over time for both in-franchise and ex-franchise customers and not charged the new customers a CIAC regardless of the PI of the project[20]. The annual revenue requirement for these reinforcement projects has been recovered through higher rates for all customers using the assets.

32. The Owen Sound Reinforcement Project has a PI of 0.31 including the proposed CIAC from ENGLP. A PI of less than 1.0 suggests that other rates will need to increase in order to recover the shortfall in revenue. In Exhibit I.EPCOR.2f), ENGLP asked Enbridge to "confirm that the resulting revenue requirement from the Owen Sound Line reinforcement costs, that is allocated to Other Transmission costs will be recovered from all Union South Rate Zone customers including M17 customers." In its response, Enbridge confirms that this will occur at the next rebasing. The result is that while Enbridge has requested that ENGLP pay the incremental costs necessary to ensure that its share of the facilities has a PI = 1.0, the same is not true for other customers requiring the expansion capacity. ENGLP will therefore face an increase in the M17 rate in order to fund to a PI =1 for its proportionate share of the remaining 82% of the Owen Sound Line expansion as well as all other similar expansions of Other Transmission lines where the project PI<1.0.

33. A similar and current example of inconsistent (discriminatory) treatment by Enbridge is the Saugeen Project.[21] Saugeen is a current community expansion project by Enbridge that will

[20] ENGLP Evidence, Page 13, Table 1 and Table 2
[21] Evidence of ENGLP, January 10, 2020, pages 18 – 21, The Saugeen Project has a proposed in service date approximately the same as the Owen Sound Expansion Project, and after ENGLP's Southern Bruce will be in service.

be supplied by the Owen Sound Line; however, no provisions have been made to directly allocate the incremental costs associated with increasing the capacity of the Owen Sound System to this community expansion project. Rather, the costs will be allocated to other customer classes, including M17.

34. In order to confirm whether Enbridge was being consistent with its application of a CIAC in transmission projects Enbridge was asked to provide any examples of other infrastructure projects wherein it applied EBO 134 and subsequently required a CIAC for the customer. The only example that Enbridge could provide was the Stelco Lake Erie Works Reinforcement Program (**"Stelco"**) in 1996[22]. A review of that example clearly indicates that it is not relevant to this discussion for several reasons, including that the project was exclusively for Stelco, versus the Owen Sound Reinforcement Project in which ENGLP is only responsible for 18% of the project.

35. ENGLP has provided in evidence[23] three Dawn-Parkway system reinforcement projects in which Enbridge did not require a CIAC. Enbridge has stated that these are not examples of inconsistent application of EBO 134 as Dawn-Parkway projects are not comparable as they increase the liquidity of the Dawn trading hub, creating long-term economic benefits to customers. The Board has been very clear in the application of the EBO 134 economic test. The first stage of the test is a DCF analysis. Stage two adds in other quantifiable public interest factors and stage three adds in other relevant public interest factors. ENGLP is not aware that Enbridge has ever quantified the specific public interest benefit of increased liquidity from any previous transmission line expansion projects. If Enbridge were to quantify the benefit from increased liquidity, then it would be a public interest factor that could be applied in stage two, and if not quantified, it would become an intangible factor to be included in stage three, but it is wholly inappropriate to apply this intangible public interest factor to a stage one DCF analysis.

36. If liquidity were to be considered in a EBO 134 test, ENGLP submits that its Southern Bruce demand would also proportionately increase the liquidity at Dawn (while the volumes may be lower the incremental expansion costs are also much lower) and, based on Enbridge's criteria,

[22] ENGLP Evidence, Pages 17 and 18
[23] ENGLP Evidence, Table 1, Page 13

it should therefore qualify for Enbridge's CIAC exemption. In its Argument-in-Chief, Enbridge stated that ENGLP's demand was not material enough[24] to qualify for this exemption, but provided no details on what a materiality threshold ought to be. In ENGLP's view, if the principle is that transmission projects which increase liquidity at Dawn are exempt from paying a CIAC, that principle should be applied in a non-discretionary manner, rather than arbitrarily using some unknown criteria regarding materiality of liquidity, applied at the total discretion of Enbridge. Additionally, as stated in ENGLP's evidence, ENGLP has not found any Board directive for treating the economics of expanding the Dawn-Parkway system any different than any other transmission project subject to EBO 134.

37. Enbridge also states in its Argument-in-Chief that the proposed CIAC ensures that a gas distributor pays their appropriate portion of the cost of upstream reinforcements. "Regardless of whether Enbridge Gas or EPCOR had been selected to service South Bruce, the selected gas distributor should be required to bear those same costs of reinforcement. However, as is clear from this application, the M17 rate would be the default rate for new distributors entering the Ontario market or any out of franchise distributors.

38. If Enbridge had been selected to provide service to the South Bruce area it would not be an out of franchise distributor and would not access transmission services through the M17 rate. Rather, the South Bruce area would then be considered in-franchise and customers would be eligible for Enbridge's residential rates.

39. A recent example of this is the above referenced Saugeen Project community expansion in which Enbridge proposed charging its standard residential M1 and M2 rates plus a System Expansion Surcharge ("**SES**") of $\$0.23/m^3$. Neither the SES, nor the M1 or M2 rates include recovery of any CIAC associated with expansion of the Owen Sound System which feeds this project[25]. Instead they would include the normal allocation of transmission costs typical of a residential customer. Thus, if Enbridge had been the successful distributor for the South Bruce

[24] Paragraphs 21 – 23, Page 7 of 23
[25] EB-2019-0187

area, ENGLP submits that it would not have included a CIAC related to the Owen Sound Reinforcement Project in its rates.

40. Proposing to charge ENGLP a CIAC for the Owen Sound Project would clearly not be consistent with Enbridge's past practices and results in discriminatory behavior as ENGLP's customers would pay for both the incremental costs for its expansion capacity as well as the incremental costs required to serve Enbridge's other customers.

41. The amount of incremental capacity from the Owen Sound Project required to serve ENGLP's requested capacity, is dependent on the existing spare capacity in the system. ENGLP initially approached Enbridge (formerly Union Gas) on approximately October 1, 2015[26] and now expects to have an in-service date of Spring 2020 to service its industrial community and will continue to add customers throughout 2020 and 2021.

42. The above referenced Saugeen Project has an in-service date of Fall 2020. Enbridge has not provided any details in evidence as to how existing capacity of the Owen Sound system was allocated to its in-franchise expansions (including those taking place after the Southern Bruce project) and the mechanics of allocating existing capacity to ENGLP or its in-franchise growth. Treating all revenue requirements on a rolled-in basis and relying on the full three stage EBO 134 economic test to support a project avoids the potential for gaming and having the incumbent reserve capacity in priority for its own internal growth (which may be coming online at a date later than other community expansion projects) to the detriment of an ex-franchise customer that may have to meet a stage one economic test and pay a CIAC.

PART IV– ENGLP Should not be Required to Pay Customer Specific Station Costs

43. In advance of initiating construction of the Dornoch interconnection facility, Enbridge required ENGLP to pay $4.02 million for the meter station at Dornoch. Having no other option to initiate construction of this crucial facility, ENGLP paid the amount.

[26] EB-2018-0244 Exhibit B.ECPOR.1a)

44. This requirement was (a) inconsistent with past practices; and (b) if ENGLP is required to accept the M17 rate, it will pay for the recovery of the capital and operating costs for a number of customer specific stations, in addition to all of the capital and operating costs for the meter station at Dornoch.

45. Enbridge's proposed rates includes[27] a monthly charge to recover fixed customer-related costs associated with having the gas distributor attached to Enbridge Gas's system.

46. This charge includes 100% of the O&M charges for the meter station and would also recover the capital cost of the meter station had ENGLP not paid for it upfront. The examples below demonstrate that this outcome is not consistent with Enbridge's past practices.

47. In its company evidence, ENGLP includes the example of the interconnection facility between the pre-merger Union Dawn-Parkway system and pre-merger Enbridge Segment A of the GTA reinforcement project. In this example, Union did not charge Enbridge a CIAC[28] for the $19.2 million interconnection facility. The revenue requirement associated with this Union-Enbridge interconnection facility is included in the Dawn-Parkway Easterly Transmission Charge and then recovered in all rates that are subject to allocation of that charge. There are at least three additional customer specific stations at the east end of the Dawn-Parkway system where it appears that Enbridge did not require the interconnecting customer to pay the interconnection costs through a CIAC, and is also recovering the capital and operating costs through the Dawn-Parkway Easterly Transmission Charge[29].

48. Enbridge's assessment that the Union-Enbridge interconnection facility is not a relevant example is incorrect. Directly comparable to the Dornoch station, this pre-merger Union-Enbridge interconnection point had, and continues to have, a single interconnection customer, and that customer is the pre-merger Enbridge. Shippers must contract with pre-merger Enbridge in order to flow gas through that station. The fact that the interconnecting downstream customer (i.e. the pre-merger Enbridge) may offer 3rd party transportation service, should have no impact on the pre-

[27] Paragraph 31
[28] Pages 22 - 23
[29] ENGLP Evidence, Page 24, lines 1 – 15

merger Union rate design for the upstream transportation rate structure. The pre-merger Union could have readily incorporated a "Monthly Charge" in its M12 or similar rates to separately recover these interconnection costs but choose not to do so.

49. ENGLP therefore asserts that the requirement by Enbridge to directly pay for the interconnection costs is inconsistent with how Enbridge has recovered the costs of other meter station interconnections. Furthermore, the M17 firm monthly transportation demand charge discussed below already includes a component to recover interconnection costs (including O&M charges for those facilities).

50. This above-noted charge is based on a distance based allocation of the Dawn-Parkway Easterly Transmission Charge, which includes recovery of the revenue requirements of various interconnection stations on the Dawn-Parkway system, including the Union-Enbridge station and three other examples discussed above. It also includes recovery of Other Transmission demand costs[30]. As the costs of the Owen Sound Reinforcement Project will be recovered through Other Transmission demand costs and the Project has a PI of 0.31, all customer rates that include an allocation of Other Transmission costs will increase to cover that shortfall[31]. ENGLP will therefore be required to pay a CIAC for its portion of the capacity in addition to an increase in the M17 rate in order to pay to bring the remainder (82%) of the Project to a PI of 1, plus all the other projects allocated to Other Transmission with PIs less than 1.

51. ENGLP submits that the proposed M17 rate design is flawed as despite payment of a CIAC, the Firm Transportation Demand Charge already includes a provision for the recovery of revenue requirements associated with interconnection costs via the Dawn-Parkway Easterly Transportation Charge.

52. Enbridge suggests that the appropriate comparison for recovery of the meter station costs is to compare the recovery mechanism used for T3 customers[32]. Since T3 rates are also dependent on the Dawn-Parkway Easterly Transportation Charge these shippers are also paying for the

[30] Exhibit B, Tab 1, Schedule 3, Page 3, para 5
[31] ENGLP Evidence, Page 15 of 39, lines 8 – 19
[32] Argument in Chief paragraph 37

interconnection charges in their transportation rate and in ENGLP's view should not be separately paying for any interconnection costs. Comparing the requirement to recover the interconnection costs as a separate chare under the proposed M17 rate design to the T3 rate that also duplicates recovery of certain costs is not an apt comparison. ENGLP submits that the pre-merger Union-Enbridge interconnect is an appropriate comparator for recovery of the interconnection cost.

53. In its Argument-in-Chief Enbridge submitted that because ENGLP has indicated it would agree to a T3 service, and that service includes recovery of customer specific station costs, that ENGLP has somehow agreed to Enbridge's proposal to recovery of station costs through a CIAC.[33] ENGLP submits that it had discussed the potential of contracting for a T3 service in the context of the service including a cost-based end of day balancing service as opposed to the proposed M17 service. As Enbridge was unwilling to consider this option, there was no discussion as to recovery of station costs. ENGLP does submit, that, in order to achieve a resolution on this matter, it continues to be willing to contract for the existing T3 service (which it currently is eligible for).

54. If in the OEB's view the costs of interconnection facilities should not be directly recovered in the M17 rate, then the interconnection charges should be included as part of the overall project costs to serve ENGLP. These costs should then be subject to the three-stage EBO 134 economic test to determine if a CIAC is required, in a similar fashion as other Parkway interconnections were treated. Since in this case the three-stage test has resulted in more than the costs of the entire Owen Sound Reinforcement Project, no CIAC should be required.

55. Since ENGLP has prepaid $4.02 million related to the interconnection costs, the Board should order Enbridge to refund this amount.

56. If the OEB agrees with Enbridge that the costs of the interconnection facility should be paid for by ENGLP, then at its next rebasing application, Enbridge should be required to adjust the Dawn-Parkway Easterly Transmission Charge and remove all interconnection costs. Enbridge

[33] Paragraph 37 - 39

should recover the related capital and O&M costs in a Monthly Charge in the same fashion as it proposes for the M17 rate.

PART V - ENGLP Should Receive a Cost-Based Daily Load Balancing Service

57. The provision of end of day balancing is a monopoly service that only Enbridge can provide to ENGLP and should be an integral part of the proposed service on a cost of service basis. Therefore, Enbridge should be required to include a cost based balancing service as an integral part of the M17 service.

a. The NGEIR Decision Does Not Support Enbridge Refusing to Include Cost Based Daily Balancing Services in the M17 Rate

58. The Elenchus Report concluded the following with respect to cost-based daily balancing services:

> *The OEB's NGEIR Decision concluded in part, "that long-term consumer protection in terms of price, reliability and quality of service is best achieved through thriving competition for the competitive elements of the storage market and effective regulation of the non-competitive elements of the market."*
>
> *The storage requirements of new distributors serving previously unserved communities in Ontario was not explicitly addressed in the NGEIR decision, nor did the decision address the availability of competitive options for specific storage based services such as daily load balancing for operational flexibility.*
>
> *It follows that if the storage services required for the daily load balance to support operational flexibility are not available on a competitive basis, the principles and precedents established by the NGEIR decision would require that those storage services should be subject to regulation that protects consumers."*[34]

59. The Elenchus Report also concluded that the Enbridge proposal is anti-competitive:

> *"…a minor adjustment to the Rate M17 service as proposed would address the competitive inequity that would result from the introduction of Rate M17 with the terms and conditions proposed by Enbridge. Enbridge is proposing that Rate M17 service will not include daily load balancing. The OEB could amend this limitation and require that daily load balancing be bundled with the service, on a basis comparable to the transportation services that are available to Enbridge to serve*

[34] Elenchus Evidence Section 2.2.1 The Natural Gas Electricity Interface Review, page 14

> *customers of community expansion projects that it undertakes. The rationale for this refinement of the NGEIR policy to require new distributors to pay market-based rates for storage would be that the market for storage with terms and conditions that would make it appropriate to use for daily load balancing is not available in the competitive storage market."*[35]

b. End of day Balancing is a Monopoly Service that only Enbridge can Provide to ENGLP

60. ENGLP, as with any distributor, will inevitably have end of day imbalances. Unlike existing Enbridge services, including M9, T3 and Enbridge Gas Distribution's Rate 200 Wholesale Service (servicing Gazifère), the proposed M17 service does not include any end of day balancing (daily balancing) rights.[36] ENGLP must therefore separately contract with Enbridge to provide that service.

61. As detailed in ENGLP's company evidence[37], and ENGLP is not aware of what the imbalance might be until informed by Enbridge four hours after the end of a gas day, the only party that can physically provide that service is Enbridge. Enbridge manages end of day balancing through a number of mechanisms, including continuously or in real time; netting out positive and negative imbalances on its system, adjusting line pack and continuous use of operational storage within its system.

62. Enbridge has stated a number of times, including in response to interrogatories[38] and in its Argument-in-Chief[39] that ENGLP has the option of accessing end of day balancing services from other parties, agents or marketers. Enbridge has provided no evidence to support these statements. On the face of it, and given the physics and the information requirements necessary to accomplish end of day balancing, only Enbridge can provide end of day balancing service to ENGLP. ENGLP's industry experts have confirmed this fact.[40]

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[35] Ibid, Section 4.3, A Competitively Neutral Approach to Operational Flexibility Service (Daily Load Balancing), pages 27 - 28
[36] As confirmed by Enbridge at Exhibit I.EPCOR.6a)
[37] Pages 26 - 32
[38] Exhibit I.EPCOR.7c)
[39] Paragraph 51
[40] ENGLP Response to Written Interrogatories, Enbridge 3

63. ENGLP wants to make it clear that there is a well defined and understood distinction between the required no notice end of day balancing service and regular contracted storage that can only be accessed at a standard NAESB nomination window. ENGLP submits that the Board should give Enbridge's submission on this issue no weight.

64. ENGLP provides a detailed account of how nominations work, how imbalances occur and how these imbalances are resolved in sections 3b) to 3f) of its evidence. ENGLP is clear that once advised of any imbalance, it will adjust future daily nominations to rectify any existing daily imbalance. For a short period (i.e. 1-2 days) from the time that the ENGLP is informed of the amount of an existing imbalance and the time that gas begins to flow under a revised daily nomination (revised to reflect the amount of the daily imbalance that exists) an imbalance will exist on the Enbridge system. Enbridge appears to be conflating the need for end of day balancing (i.e. daily balancing) as just described, with the process to adjust the ongoing daily nominations to attempt to correct any imbalances that may exist (by adjusting some combination of daily purchases and/or injections/withdrawal from storage) that can be addressed through seasonal storage. ENGLP does not disagree that market-based (seasonal) storage can be used in the revised nomination process to reverse and imbalance, but the end of day balancing service which will exist for a 1to 2 day period following ENGLP being made aware of the imbalance by Enbridge is a service that only can be provided by Enbridge.

65. In its Argument-in-Chief Enbridge[41] stated that ENGLP's willingness to accept a T3 service with the embedded cost-based storage replaced with market-based storage: "Will align ENGLP's storage practices with those of other ex-franchise distributors such as legacy Enbridge Gas Distribution, Energir (formerly Gaz Meto) and Utilities Kingston who all purchase market-based storage to meet both their seasonal and daily load balancing needs; …" [Emphasis added] As detailed above, ENGLP confirms that end of day balancing services are not available on a competitive basis for utilities in which Enbridge is the monopoly transmission supplier. Utilities Kingston purchases an imbalance service from TC Energy to deal with any daily imbalance and only may use market based storage to correct an imbalance the day or more after it occurs. Such

[41] Paragraph 48

storage is unsuitable to address the imbalance while it is occurring. That can only be managed by the monopoly transmitter, in ENGLP's case Enbridge.

c. How Imbalances are Addressed in the Proposed M17 Rate

66. Enbridge argues that the M17 Rate Schedule allows for imbalances to exist and that the Interruptible Service HUB Contract creates the legal framework for an end-of-day imbalance to temporarily exist, allowing time for imbalances to be identified, quantified, and allocated to the appropriate storage contract. [42]

67. Section of Schedule B of the M17 Rate Schedule directs how ENGLP must allocate any daily imbalances in order to ensure than none exist at the end of the day.

> *10. The parties hereto recognize that with respect to Transportation Services, on any day, receipts of gas by Union and deliveries of gas by Union may not always be exactly equal, but each party shall cooperate with the other in order to balance as nearly as possible the quantities transacted on a daily basis,* ***and any imbalances arising shall be allocated, as applicable****, to: (i) the firm contract handling daily imbalances entered into by Shipper pursuant to Schedule "A", Article XXI, Section 2.a, or (ii) the agreement entered into by Shipper pursuant to the requirement stated in Shipper's associated precedent agreement*[43]
> [emphasis added]

68. ENGLP notes that its options to allocate imbalances include (i) above which involves the use of an Interruptible Service HUB Agreement with storage provided by Enbridge and option (ii) above, which involves the Shipper (ENGLP) entering into a firm contract to handle daily imbalances[44]. As confirmed in its evidence, Enbridge is the only potential supplier of end of day balancing services to ENGLP. Within the framework of the M17 rate, Enbridge is only offering to enter into an agreement for end of day balancing service at market rates. Thus while Enbridge's

[42] Paragraphs 52 - 56
[43] Exhibit C, Tab 1, Schedule 1, pages 15 - 16
[44] Exhibit I.EPCOR.10, Attachment 1, Page 3 of 22, clause 3.3(a)

Argument-in-Chief[45] points to wording that purports to give ENGLP the right to contract for end of day balancing with any party, Enbridge is the only entity that can provide those services to ENGLP. Thus the reality is that ENGLP can only contract with Enbridge for end of day balancing services through either option (i) or (ii) above.

69. While Enbridge submits that the Interruptible Service HUB Agreement creates the legal framework for end of day balancing, there are a number of reasons why that Agreement is unsuitable as a mechanism for provision of end of day balancing. First, ENGLP notes that the balancing storage service available through the Interruptible Service HUB Contract is interruptible, with Enbridge having the right at its sole discretion to provide 48 hour verbal notice to require ENGLP to bring its Balancing Account to zero by the end of such 48 hour period. If any balance remained it would be subject to Enbridge's Market Price Service Schedule, which prices would be considered punitive and can change on 30 day's notice**.** ENGLP understands that it is not unusual for Enbridge to provide such 48 hour notice during periods of high demand for storage, including during fall months when remaining storage capacity is low. ENGLP submits that relying on an interruptible service for a service as critical as end of day load balancing would be imprudent. Furthermore, exposing its customers to a punitive charge if it did not clear its storage balance to zero in 48 hours (unlikely given the dynamic nature of end of day load balancing) would be equally imprudent.

70. A second reason why the Interruptible Service HUB Agreement is an unsuitable mechanism for provision of end of day balancing is the balancing service included is a nominated service rather than a no notice service as would be required to address end of day imbalances. A nominated service is not suitable because Enbridge would not inform ENGLP that an imbalance exists until four hours after the end of a gas day[46] at which time it can nominate for HUB balancing storage for the next day. ENGLP is therefore physically unable to use a nominated balancing service to retroactively address a daily imbalance by the end of the day in which it occurs as it is

[45] Paragraphs 52 - 56
[46] ENGLP has installed a check meter at Dornoch to confirm gas volumes. However, the official measure of gas flow is Enbridge's meter and ENGLP cannot legally rely on its check meter to determine imbalances.

unaware of the imbalance until after the end of the gas day[47]. A no notice daily balancing service removes the requirement for daily nominations, allowing the balancing to take place on a real time basis.

d. ENGLP Will be Paying for, but not Receiving, End of Day Balancing Services in the M17 Rate

71. ENGLP details in its evidence that Enbridge recovers the cost of its 9.5 PJ system integrity storage[48] to provide end of day balancing services.

> "*As an integrated storage and transmission system operator Union requires system integrity space to support the integrity of the system as a whole and provide the provision of service to all customers. It provides reserve capacity and allows for the operational balancing necessary to manage all of the services Union offers and ensures the integrity of Union's storage, transmission and distribution systems*." [Emphasis added]
>
> *These operational requirements include 1.1 PJ for System Line Pack and 0.9 PJ for OBA/LBA imbalances. The System Line Pack storage is defined as "Swings in system line pack due to unexpected upsets and unplanned system demands may result in the necessity to withdraw from storage to replenish line pack on Union's Dawn-Parkway, Panhandle and Sarnia systems," OBA/LBA Imbalances are defined as "Operational balancing agreement ("OBA") and load balancing agreement ("LBA") imbalances occur daily at various receipt and delivery points on Union's system. To the extent that OBA/LBA imbalances draft Union's system on any given day an equivalent volume of storage is required to balance supplies and demands on Union's system."*
>
> *It is clear from the above-noted evidence that Enbridge reserves a certain amount storage to manage potential daily imbalances for all of its services/customers. A portion of these system integrity storage costs are allocated to transmission rate classes. However, Enbridge is proposing to prevent M17 customers from accessing these balancing services afforded to other services (e.g., their Dawn-Parkway M12 service).*

72. Enbridge (formerly Union) was clear in its submission noted above that this 1.1 PJ and 0.9 PJ of integrity storage is specifically intended to manage line pack and imbalances for **all** services. The cost of this balancing storage is included in the underlying cost structure on which the M17 rate is based. Therefore, the M17 rate reflects the costs associated with daily balancing provided by Enbridge. ENGLP should not now also be required to purchase a separate market-based storage

[47] Based on NAESB nomination windows, ENGLP cannot address an imbalance from day one until it nominates balancing storage for day three. See ENGLP Company Evidence, Pages 27 - 31
[48] ENGLP Company Evidence 3g, Pages 33 - 34

service to accommodate this short term balancing need that is provided to all other services and whose costs of providing the service are embedded in the M17 rate.

e. The LBA Originally Included in Enbridge's Proposed New M17 Service Included Market-Based Balancing Services and did not Reflect the Cost of Providing the Service to ENGLP

73. In its Argument-in-Chief[49], Enbridge submits that the Limited Balancing Agreement ("**LBA**") originally included in the M17 proposal is industry standard and therefore should have been accepted by ENGLP. As stated in its evidence, a material concern that ENGLP had with the LBA was that imbalance fees above the first tier were not cost-based[50], but were mirrored after TC Energy's rate to provide a similar service on TC Energy's system.

74. One of the two examples Enbridge used it its Argument-in-Chief to support its argument that the LBA was industry standard was that Enbridge has entered into a similar agreement with TC Energy in its Union North rate zone.

75. It is not surprising that an LBA that TC Energy offered to Enbridge would be based on TC Energy's tolls as this would align with standard rate making principles. However, that does not support an argument that ENGLP should enter into an agreement with Enbridge that reflects TC Energy's tolls.

76. Enbridge also submits that ENGLP should not have a concern with the basis of how a regulated service is costed as, by its calculations, ENGLP may not access that service on a regular basis[51]. Again, Enbridge is promoting the acceptance of a regulated service whose rates appear to have no relationship with the cost of providing that service. ENGLP notes that when it raised its concern regarding contracting for a regulated Enbridge service that was based on TC Energy's rates, Enbridge chose not to consider basing the service on Enbridge's costs. Rather, it presented

[49] Paragraphs 58 - 64
[50] Page 37
[51] Paragraph 63

ENGLP with a revised proposed M17 rate with no end of day balancing service, which is demonstrably unsuitable in meeting ENGLP's requirements.

77. In its Argument-in-Chief Enbridge[52] stated that "…this was a requirement [i.e., a secure daily load balancing service for ENGLP] which was added to Rate M17 in an effort to alleviate EPCOR's concerns with the original M17 proposal…" ENGLP disputes that requiring it to acquire a market based daily load balancing service would in any manner address any of the concerns it had with Enbridge's initial M17 proposal.

78. Enbridge should be directed to include reasonable cost based daily balancing provisions in the M17 service, without any incremental fees.

PART VI – There should be No Restrictions on Access to the Existing M9 and T3 Services and Enbridge's Request in this Regard should be Denied

79. The Elenchus Reports identifies that restricting access to the existing M9 and T3 service is anti-competitive and for this reason, Enbridge's request to change the availability provisions of these services should be rejected.

80. The Elenchus Report highlights the following:

> *The most direct way to avoid tilting the competitive playing field … would … be to reject the proposal that Rate M9 and Rate T3 services will not be available to new distributors serving new communities."*[53]

81. ENGLP's view is that the availability provisions to the existing M9 and T3 services should not be changed. Potential customers of this service should have the option to choose the service that best meets their requirements.

82. Forcing new distributors to use this service will make it virtually impossible for new distributors to compete to service new franchise areas under an M17 only service.

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[52] Paragraph 57
[53] Elenchus Evidence, Section 4.3, A Competitively Neutral Approach to Operational Flexibility Service (Daily Load Balancing), page 27

83. In its Argument-in-Chief[54] Enbridge submits that it proposes to "…limit the applicability of the existing Rate M9 and T3 rate schedules to existing gas distributor customers who commenced and continued service to their current delivery points under these rates prior to January 1, 2019 in accordance with Exhibit C, Tab 1, Schedules 2 and 3." [Underline added] However, the reference quoted indicates that the service is limited "[To a Distributor] …who commenced and continued service under Rate M9 [T3] prior to January 1, 2019." The underlined portion in Enbridge's Argument-in-Chief appears to be an effort to introduce an additional restriction that was not included in its application. As this additional restriction was only recently introduced in Enbridge's Argument-in-Chief, its impacts are unknown as it has not been tested by the Board or intervenors, ENGLP submits that it should be specifically disallowed by the Board.

84. ENGLP notes that Enbridge has been inconsistent with the application of this new service. Enbridge indicates[55] that the M17 service was introduced in response to new gas distributors requesting service from Enbridge. The key features of M17 are point-point cost-based transportation requiring receipts and deliveries to be balanced daily, no cost based seasonal storage, requires daily nomination, no daily balancing rights, no access to gas supply, (as confirmed in Ex I.EPCOR.6a)).

85. Enbridge confirmed[56] that Certarus recently began receiving natural gas service from Enbridge in the Timmins area to produce and deliver compressed natural gas to end use customers in Northern Ontario. Enbridge states that it does not believe that Certarus is a gas distributor under the OEB Act[57] and Certarus is receiving a bundled distribution service from Enbridge and Enbridge has not introduced an M17 like service for this customer[58]. Moreover, Enbridge has a commercial interest in the success of Certarus beyond the traditional distribution function: "*An*

[54] Paragraph 3, page 1
[55] Exhibit B, Tab 1, Schedule 1, para 8
[56] Exhibit I.EPCOR.1b)
[57] Exhibit I.EPCOR.1f)
[58] Exhibit I.EPCOR.1e)

Enbridge Inc. subsidiary has executed agreements with Certarus concerning investments in two natural gas compression hubs and ancillary facilities in Ontario."[59]

86. In a recent OEB Staff letter dated February 25, 2020 to the Assistant Deputy Minister (Energy, Northern Development and Mines), Staff provide an opinion on whether a person delivering LNG to a utility would be considered a distributor and subject to rate regulation.

> *Section 36(1) of the Ontario Energy Board Act, 1998 (OEB Act) states:*
>
> > *No gas transmitter, gas distributor or storage company shall sell gas or charge for the transmission, distribution or storage of gas except in accordance with an order of the Board, which is not bound by the terms of any contract.*
>
> *Section 3 of the OEB Act defines a gas transmitter as "a person who carries gas by hydrocarbon transmission line, and, 'transmit' and 'transmission' have corresponding meanings." A gas distributor is defined as "a person who delivers gas to a consumer and 'distribute' and 'distribution' have corresponding meanings."*
>
> *The LNG Delivery Service [as addressed in the letter] also does not appear to meet the definition of being a gas distribution, as the gas is not being delivered to a consumer; rather ,it is being delivered to a utility….Note that the definition of gas distributor makes no reference to the method by which natural gas is conveyed, so if an LNG Delivery Service were delivering gas directly to a consumer (for example an industrial facility that may or may not operate its own gasification equipment) a distribution rate order could be required. [Emphasis added]*
>
> *LNG and CNG are both the same natural gas product although they operate at different temperatures and pressures. Certarus delivers gas directly to end use customers[60], which under the OEB Act constitutes 'distribution' as distribution is not limited by the method of conveyance (as noted by Staff). Certarus is therefore a distributor under the OEB Act.[61]*

87. If Enbridge was committed to principles it advances for introducing the M17 service for ENGLP, Enbridge should have introduced a new M17 like service for Certarus at each of the Timmins and the Red Rocks sites, but chose not to do so and continued to provide service under one of the existing suite of bundled services.[62] Since Enbridge was also an investor in the facilities

[59] Exhibit I.EPCOR 1a)
[60] Exhibit I.EPCOR.1 References in iv
[61] See Appendix I to this submission for copy of OEB Staff's correspondence, dated February 25, 2020.
[62] Exhibit I.EPCOR.1e)

it would have had detailed and specific knowledge of Certarus' business plan (the intention to serve end use industrial facilities is also detailed in Certarus' press release).

88. ENGLP submits that Enbridge's introduction and proposed application of the M17 to ENGLP but not Certarus is discriminatory.

89. ENGLP is not suggesting that Enbridge be required to introduce a new M17-like service for Certarus at this time rather ENGLP suggests that ENGLP not be restricted from accessing Enbridge's existing suite of services as they have provided to other distributors like Certarus.

PART VII: ENGLP Should Have Access to the Currently Approved M9 and T3 Services Pending Decision from the OEB

90. ENGLP is expected to commence service in the early spring of 2020. In the event that the OEB has not issued a decision on this proceeding, ENGLP submits that it is entitled to have access to the currently Board approved M9 and T3 services.

91. ENGLP does expect to be in a position to commence service to its end-use industrial customers in June of 2020, however, this time may be accelerated if weather conditions allow early field access. In the event that the OEB has not made a decision by end of April, ENGLP requests that the Board require Enbridge to supply ENGLP under one of Enbridge's existing M9 or T3 services (at ENGLP's election). Enbridge has requested that should service be required prior to the OEB having decided this case that the OEB give interim approval to M17[63]. ENGLP views this approach as highly prejudicial to ENGLP, given that there are two currently approved Enbridge rates that ENGLP is eligible for. It would also not be appropriate to require ENGLP to wait for a final decisions as there will be large industrial customers that are ready to connect to ENGLP's South Bruce system.

[63] Exhibit A Tab 2 Schedule 2 paragraph 9

PART VIII: Conclusion

92. For the reasons articulated in this proceeding, ENGLP submits that the Board should not accept Enbridge's proposal to restrict access to the existing M9 or T3 services.

93. In the alternative, if the Board accepts Enbridge's proposal regarding the M9 / T3 services, ENGLP submits that Enbridge's proposal not to include a cost based end of day balancing service in M17 is anti-competitive and forces ENGLP to contract for a monopoly service at rates that are outside of the Board's review. ENGLP therefore submits that the Board should direct Enbridge to include a cost based end of day balancing service bundled with M17 similar to that included in the M9 service. In the alternative, the Board should direct Enbridge to include the LBA as discussed in its Argument-in-Chief[64] with the modification that the fees above the first tier should be based on Enbridge costs rather than TC Energy's cost of transporting gas from Alberta storage to Ontario.

94. ENGLP notes that in any case, Enbridge's calculation of a CIAC related to the Owen Sound Reinforcement project or the Dornoch station should not be approved by the Board.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

March 6, 2020

[Original Signed By:]

EPCOR Natural Gas Limited Partnership
Per: Bruce Brandell, Director

[64] Paragraphs 58 - 63

APPENDIX 1

Ontario Energy Board | Commission de l'énergie de l'Ontario

February 25, 2020

BY EMAIL: Carolyn.Calwell@ontario.ca

Ms. Carolyn Calwell
Assistant Deputy Minister
Strategic Network & Agency Policy
Division (Energy, Northern Development and Mines)
6th Flr, 77 Grenville St,
Toronto, ON
M7A 2C1

Dear Ms. Calwell,

I write in regard to your letter dated February 12, 2020, in which you asked the OEB to describe the legal and regulatory framework that applies to the delivery of liquefied natural gas (LNG) by means other than by pipeline. I am pleased to provide the following response setting out OEB staff's views on the question.

As discussed in greater detail and subject to the assumptions and caveats noted below, OEB staff`s view is that the delivery of LNG by means other than a pipeline:

- is not subject to rate regulation as gas transmission or gas storage;
- is not subject to rate regulation as gas distribution provided that the LNG is not being delivered to an end-use consumer;
- is not subject to leave to construct, except in respect of the construction of any related transmission or distribution pipelines that meet the legislated thresholds (length, cost, pipe size or operating pressure);
- will require a certificate of public convenience and necessity in respect of any related liquefaction facility or re-gasification facility; and
- will require a municipal franchise agreement if any related liquefaction facility or re-gasification facility is not entirely on private land, cross municipal infrastructure or rights of way or otherwise interact with municipal interests.

I have limited the scope of the reply to the OEB's legal and regulatory framework, and do not comment on any legal and regulatory framework that may be administered by other bodies such as the Technical Standards and Safety Authority.

As you will understand, the question of the applicable legal and regulatory framework is highly fact-specific. For the purposes of this letter, the specific factual situation that we have considered based on a review of your letter is the following:

- LNG is delivered by means other than a pipeline from a liquefaction facility to a re-gasification facility, and not to an end-use consumer (referred to below as the "LNG Delivery Service")
- The LNG is then delivered from the re-gasification facility to end-use consumers by a utility via pipeline. This response does not discuss the legal and regulatory regime with respect to the utility operated distribution network that would connect the re-gasification facility to end use customers.

Our response could be different if the scenario in question were to be different; for example, if an LNG facility were to deliver gas directly to a consumer, as opposed to delivering the gas to a utility, with the utility then delivering the gas to consumers.

I should note that the LNG Delivery Service described above is similar to a service related to a live proceeding that is currently before the OEB. This proceeding deals with an application by the Town of Marathon (Marathon) for various approvals related to proposed natural gas pipeline networks in Marathon and several other northern municipalities to provide these unserved communities with LNG (EB-2018-0329). Nipigon LNG would supply LNG to Marathon by truck. Despite the fact that Nipigon LNG's activities are not the subject of Marathon's application, in final argument two parties argued that the OEB should consider whether Nipigon LNG should be rate regulated. The record of this proceeding is now closed and we believe it is unlikely that this new issue will be substantively addressed by the panel, but in the event that it is we will advise as to whether and how it may affect the response provided in this letter.,

With this as context, this letter reviews the following areas of the OEB's current legislative and regulatory framework, which we believe are relevant to your question: distribution rates, storage rates, leave to construct, certificates of public convenience and necessity, and municipal franchise agreements. The discussion below represents OEB staff's views, informed where applicable by OEB decisions. However, some of the points below have not yet been the subject of an OEB decision. While the views expressed in this letter are those that we would expect to put forward in the event that related issues arise in a proceeding, the OEB panel presiding on the matter will ultimately make determinations on how the legal and regulatory framework applies.

A. Potential approvals required under the *Ontario Energy Board Act, 1998*

1) Rate regulation under section 36

In OEB staff's view, the LNG Delivery Service is neither gas transmission nor gas distribution as those terms are defined in the *Ontario Energy Board Act, 1998* (OEB

Act), and no rate order would be required in that regard. Although the LNG Delivery Service requires some form of short-term storage, OEB staff believes that the better view is that the entity operating the LNG Delivery Service is not a "storage company" and therefore no rate order is required in relation to storage.

Section 36(1) of the *Ontario Energy Board Act, 1998* (OEB Act) states:

> No gas transmitter, gas distributor or storage company shall sell gas or charge for the transmission, distribution or storage of gas except in accordance with an order of the Board, which is not bound by the terms of any contract.[1]

Section 3 of the OEB Act defines a gas transmitter as "a person who carries gas by hydrocarbon transmission line, and 'transmit' and 'transmission' have corresponding meanings." A gas distributor is defined as "a person who delivers gas to a consumer and 'distribute' and 'distribution' have corresponding meanings."

The LNG Delivery Service does not meet the definition of gas transmission, as no hydrocarbon transmission line is involved.

The LNG Delivery Service also does not appear to meet the definition of gas distribution, as the gas is not being delivered to a consumer; rather, it is being delivered to a utility. The utility, on the other hand, would constitute a gas distributor and would typically require a rate order under section 36 of the OEB Act to distribute gas to consumers. Note that the definition of gas distributor makes no reference to the method by which natural gas is conveyed, so if an LNG delivery service were delivering gas directly to a consumer (for example, an industrial facility that may or may not operate its own gasification equipment) a distribution rate order could be required.

Section 36 also requires a rate order where a storage company charges for the storage of gas. "Storage company" is defined as "a person engaged in the business of storing gas." The LNG Delivery Service very clearly requires the short-term storage of gas, both at the liquefaction site (where the liquefied gas is stored in tanks prior to being transported by trucks) and at the re-gasification facility where the gas is stored in tanks until it is distributed by the utility to consumers.

Although the LNG Delivery Service requires some level of short-term storage, and presumably will in some manner charge for that service, storage is not its chief purpose. Storage is incidental to its main gas delivery function, and it is not expected that any party would use the LNG Delivery Service exclusively as a storage service. In OEB staff's view, the LNG Delivery Service you have asked about is not truly in the "business

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[1] Pursuant to section 3 of O. Reg. 161/99, section 36 does not apply to the sale, distribution, transmission or storage of less than 3,000,000 cubic meters of gas annually. Many projects would exceed this threshold. The Marathon project, as an example, is expected to comfortably exceed 3,000,000 cubic meters annually.

of storing gas", and therefore no rate order under section 36 of the OEB Act would be required to allow the entity providing the LNG Delivery Service to charge for the storage of gas.

2) Leave to construct under section 90

The LNG Delivery Service is unlikely to require any leave to construct approval under section 90 of the OEB Act.

Section 90 states:

> **90** (1) No person shall construct a hydrocarbon line without first obtaining from the Board an order granting leave to construct the hydrocarbon line if,
>
> (a) the proposed hydrocarbon line is more than 20 kilometres in length;
>
> (b) the proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulations [Note the amount currently prescribed is $2,000,000];
>
> (c) any part of the proposed hydrocarbon line:
>
> (i) uses pipe that has a nominal pipe size of 12 inches or more, and
>
> (ii) has an operating pressure of 2,000 kilopascals or more; or
>
> (d) criteria prescribed by the regulations are met.

As the LNG Delivery Service would be transporting gas by means other than a hydrocarbon line, leave to construct would generally not be required.

That said, there is a possibility that leave to construct would be required for the construction of any pipelines connecting the LNG Delivery Service to transmission or distribution pipelines at either the liquefaction facility or the re-gasification facility, provided the thresholds set out in section 90 are met. In the Nipigon LNG liquefaction facility case (EB-2018-0248) (where the liquefaction facility was connected by a short pipeline to the TransCanada Mainline), none of the thresholds were met and therefore leave to construct was not an issue.

B. Potential approvals required under the *Municipal Franchises Act*

1) Certificate of Public Convenience and Necessity (Certificate)

Section 8 of the *Municipal Franchises Act* (MFA) provides: "[n]o person shall construct any works to supply [...] natural gas in any municipality [...] without the approval of the Ontario Energy Board, and such approval shall not be given unless public convenience and necessity appear to require that such approval be given."

The construction of either a liquefaction facility or a re-gasification facility, which are likely to be located in different municipalities, requires a Certificate. The Nipigon LNG liquefaction facility, for example, received a Certificate from the OEB on November 22, 2018.

The Certificate for either a liquefaction facility or a re-gasification facility would typically only need to cover the property on which the facility is located (i.e. not the entire municipality). The issuance of a new Certificate is often done through a short written proceeding by a delegated authority with minimal process. The process for issuing a Certificate in respect of the Nipigon LNG facility, for example, was completed in about 3 months from the filing of the application to the final decision and issuance of the Certificate. Each case, however, would be considered on its own merits and depending on what issues might arise could take longer.

2) Municipal Franchise Agreement

Section 3 of the MFA states:

> A municipal corporation shall not grant to any person nor shall any person acquire the right to use or occupy any of the highways of the municipality for a public utility or to construct or operate any part of a public utility in the municipality unless a by-law setting forth the terms and conditions upon which and the period for which such right is to be granted or acquired has been assented to by the municipal electors.

Section 1 defines a public utility as "natural and other gas works".

Section 9 of the MFA requires OEB approval of any by-law (typically in the form of a franchise agreement entered into between a municipality and the public utility) with respect to section 3. Section 10 of the MFA requires approval for any renewals or extensions.

The OEB has created a model franchise agreement that is the basis for almost all franchise agreements in Ontario. The model franchise agreement deals with matters

relating to the interplay between municipal rights of way and infrastructure, and natural gas works owned by a public utility (typically pipelines). In a recent decision, the OEB determined that, where the proposed natural gas works are entirely on private property and do not actually cross or otherwise interact with municipal infrastructure, no municipal franchise agreement is required (EB-2019-0089).

In cases where liquefaction or re-gasification gas works are not entirely on private property, or they cross municipal infrastructure or rights of way (or otherwise interact with municipal interests), a municipal franchise agreement will need to be entered into between the owner of the facility and the municipality and approved by the OEB. Assuming the parties use the model franchise agreement, the OEB's approval process as discussed above is typically short and conducted in writing. Every application, however, will have to be considered on its own merits.

I hope this review of the OEB's legal and regulatory framework with respect to the LNG Delivery Service is responsive to your request. If you have any questions, please do not hesitate to contact me.

Yours truly,

Brian Hewson
Vice President - Consumer Protection & Industry Policy