BACKGROUND

In 2018, Union Gas Ltd. ("UGL") brought an application to the Board to establish a new M17 rate to address what it believed were evolutions in the regulatory construct and market that necessitated this rate for new entrants[1]. While issues surrounding this new proposed rate were complex enough, the determination of the rate was complicated by the uncertainty of the impact of the expected reinforcement project to provide firm service to the new entrant who would be an embedded distributor in the host Union Gas territory (South Zone). After some of the challenges of the uncertainty and in-efficiency were acknowledged, the Board accepted the requested withdrawal of the application with understanding that a combined M17 and Owen Sound Line facilities application would be made by Enbridge Gas Inc. ("EGI") formerly UGL.[2]

EGI has filed the expected application providing its combined view of the evolved M17 rate, the Owen Sound Line Reinforcement and the implications for EPCOR Natural Gas Limited Partnership ("ENGLP"). The following are the submissions of the Federation of Rental-housing Providers of Ontario ("FRPO") addressing some of the contested issues in this proceeding.

THE M17 RATE IS A BARRIER RATE

In its original application and the current proceeding, Enbridge Gas Inc. ("EGI") has applied to the Board for the creation of an M17 that, in its assertion "rectifies" a situation that was in place at the time of the NGEIR decision and provides "opportunity" for distributors who may compete with EGI to have access to market-based storage[3]. For the reasons outlined below, we respectfully submit that the Board ought to reject

[1] EB-2018-0244
[2] OEB Ltr_M17 Rate APPL Close_ Enbridge_20190801
http://www.rds.oeb.ca/HPECMWebDrawer/Record/648683/File/document
[3] AIC, page 8, para. 28

this scheme as the opportunity is purely EGI's to enhance profitability and create a sustainable competitive advantage in future opportunities to serve new territories.

Cost vs Market-Based Storage

The South Bruce area contains the Municipality of Kincardine which is the largest municipality in Ontario without access to natural gas. The heated competition to serve this area resulted in a generic proceeding allowing the Board to clarify its expectations for granting of franchise rights and approvals for leave to construct.[4] The following proceedings conveyed the right to ENGLP to provide natural gas service to the South Bruce communities. In our view, these decisions did not cease the competition as the incumbent utility is attempting to use its position as monopoly provider to impose costs and conditions on the entrant that it would not have imposed on itself if it been successful in securing the franchise. Further, approval of this applied for approach will result in a sustainable competitive advantage for EGI for future contested service territories.

EGI has constructed a transportation service separate from the storage services enjoyed by other embedded distributors in former Union South and Enbridge Gas Distribution ("EGD") territories. EGI asserts that it did so to provide new distributors with "opportunity" to be served by market-based storage. However, as is evidenced in this proceeding, the cost-based service comes at the significantly lower cost $0.38/GJ[5]. The current market based cost for longer-term contracted storage favoured by LDC's is more than twice the cost-based rate at $0.83/GJ[6].

The difference in the cost-based versus market-based rate is substantial for any new proponent developing a proposal to serve a new community as an embedded distributor. In attempting to serve natural gas to these communities, the new proponent would have

[4] EB-2016-0004, page 19
[5] EB-2018-0244 Exhibit B.Staff.2
[6] Exhibit I.FRPO.1

to offer distribution rates in a competitive bid process that are higher than EGI. EGI's distribution rates would be underpinned by cost-based storage. If the Board approves market-based storage as the only option for other proponents under an M17 rate, to provide for the reasonable opportunity to recover a Board-approved Rate of Return, the proponent would have to add the additional cost of storage to its rates providing EGI with a sustainable competitive advantage.[7]

The NGEIR Decision has been in place for over a dozen years. While the former EGD and UGL have opposed a review of this landmark decision, it is clear that they want to put their own interpretation on what the Board would have said about new entrants into the market. The Board at that time would not have considered or foreseen that the largest virgin territory, not served by natural gas, completely surrounded by Union Gas territory would be served by a new entrant. When they allowed for growth in the Union franchise, they may have been including the potential of virgin territory. For EGI to now say, because the new distributor is not owned by the incumbent EGI, they cannot have cost-based storage is self-serving. The inappropriateness of this position is apparent when considering the counterfactual that if EGI had been granted the franchise, the new natural gas customers would be served with cost-based storage.

<u>ENGLP is an Embedded Distributor in the Host EGI Franchise</u>

One important aspect of this proceeding that has not been emphasized is the nature of the ENGLP franchise. This new natural gas distribution utility will be served exclusively by EGI who, of course, did not win the opportunity to distribute gas in this franchise. Therefore, ENGLP is an embedded utility served by the host utility with which it competed.

Beyond creating the potential for challenging negotiations between embedded and host utilities, this reality provides an eloquent way to consider the appropriateness of cost-based storage as determined in the NGEIR proceeding. The distinguishing factor the

[7] ENGLP_EVD_Expert_20200114, page 25, lines 11-15

Board used for the continuation of cost-based storage was access to alternatives. As a result, City of Kitchener Utilities, Natural Resources Gas, Six Nations Natural Gas and Gazifere were determined to be eligible for cost-based storage. What is common amongst all those utilities is that they were embedded distributors to a host (EGD for Gazifere and UGL for the others). As embedded distributors, they would have no inter-connection to another pipeline that could potentially provide them another storage or load balancing service (especially daily load balancing). In our view, this distinction of an inter-connecting pipeline is directly and appropriately applied to ENGLP.

<u>Non-embedded Utilities have Access to Interconnecting Pipeline with Daily Balancing</u>

The two utilities identified specifically as receiving market-based storage, EGD and Utilities Kingston ("UK"), both received gas from TransCanada Pipelines ("TCPL"), now TransCanada Energy ("TCE") while EGD also received gas from former UGL. In each case though, the utility had Operating Balance Agreements with TCPL to manage variations in consumption. As utilities, different from other direct purchase, end-use customers or marketers/shippers, utilities cannot determine specifically how much to nominate to balance their consumption on a daily basis. At the same time, as utilities, they need the service to be firm[8] and not interruptible.

Direct purchase, end-use customers, almost without exception, have bundled transportation or semi-unbundled agreements[9] which allow them to consume as needed and balance either annually in the EGD rate zone or twice a year in the Union Gas South territory. Marketers/shippers can specify a nomination to the pipelines that may flow in specific quantities through the pipeline or be dropped off in the franchise as part of deliveries to customer at Dawn, Parkway or other locations that are daily balanced by the host utility as part of the receiving customer direct purchase ("DP") contracts. As a

[8] The Board affirmed this principle in EB-2010-0231 EGD System Reliability
[9] One notable exception are natural gas fired electricity generators who have a special FT-24 contract (24 daily nomination windows) which was developed after NGEIR to address the difficulty of generators in specifying nomination to match their expected consumption which changes with weather and decisions of dispatch that are outside of their control (like utilities)

result, the need for daily balancing falls mostly to utilities and the daily balancing service allows for the utilities to facilitate supply competition through keeping DP supply nominations whole and not pro-rated with system supplies. If ENGLP is allocated cost based storage in its balancing service with EGD, each DP contract would need to benefit from this allocation.

In the Ontario context this daily balancing for utilities is facilitated by either storage connected within the franchise (as in the former UGL franchise area) or TCPL through its Storage and Transportation Service ("STS") and facilitating Operator Balancing Agreement ("OBA"). The STS service allows a shipper attached to TCE's system having access to a delivery point connected to storage to use the firm service and its multiple nomination windows to adjust its nominations throughout the day to try to strive to minimize the imbalance at the end of the day. However, given that the last opportunity to adjust nominations to consumption is approximately half-way through the day[10], TCE's OBA allows for the shipper to carry a imbalance in its Load Balancing Account ("LBA").

The LBA is an account that receives the difference between the amount nominated to be delivered and the amount consumed (positive or negative). The LBA is structured to incent shippers to take reasonable actions to stay in balance by charging a cost to daily imbalances outside of an initial threshold at increasing rate tiers (i.e., the more the shipper is out of balance at certain thresholds, the rate per GJ's above that tier, the rate is substantially higher). The imbalance is put into the account for eventual clearance but further discipline is added by the presence of cumulative imbalance charges, again with increasing rates at increasing tiers of imbalance. If not managed these costs can be significant but that is the design of the system to incent the shipper to manage their nominations as well as possible recognizing every day the shipper has an opportunity to make a sophisticated estimate to minimize these additional LBA costs.

[10] https://fgttransfer.energytransfer.com/fginfopost/postedDocs/NAESBVer3Changes.pdf

With No Access to TCE as an Interconnecting Pipeline ENGLP Must Contract with EGI

The STS, OBA and LBA components of TCE are integral to the utilities of Eastern Canada being able to receive firm service and manage imbalances in an economic fashion. The importance of this service was emphasized by EGD and UGL opposing TCE's recent proposed changes to the service[11]. But with no access to TCE as an inter-connecting pipeline, ENGLP's only provider for daily balancing service is EGI. While the nomination and measurement challenge was articulated in ENGLP's evidence[12], the need for a firm balancing service is emphasized in the proposed M17 contract.

The applicable language in the proposed M17 contract that addresses this issue is[13]:

> 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. (emphasis added)

While the precedent agreement referenced in (ii) is not on the record to our knowledge, the fact that these contentious issues are in this proceeding, we conclude that there is no enforceable language in (ii). Therefore moving back to the language in (i) and eliminating the articles that deal with government and regulatory approvals along with financial assurances, the referred to section reads the following:

> **XXI. PRECONDITIONS TO TRANSPORTATION SERVICES**
> This Article XXI is only applicable if Enbridge and Shipper have not entered into a precedent agreement related to the Transportation Services.
> 1. Enbridge Conditions: The obligations of Enbridge to provide Transportation Services hereunder are subject to the following conditions precedent, which are for the sole benefit of Enbridge and which may be waived or extended in whole or in part in the manner provided in the Contract:
> …..
> d. Shipper and Enbridge shall have entered into the Interruptible Service HUB Contract or equivalent (the "**Facilitating Agreement**"), and an Interconnect Operating Agreement.

[11] NEB RH-001-2016 TCPL Storage and Transportation Service, Application to Amend
[12] ENGLP_EVD(Company)_20200110, pages 30-31
[13] Filed: 2019-08-29, EB-2019-0183, Exhibit C, Tab 1, Schedule 1, Page 15 of 17
SCHEDULE "B" Nominations

> 2. Shipper Conditions: The obligations of Shipper hereunder are subject to the following conditions precedent, which are for the sole benefit of Shipper and which may be waived or extended in whole or in part in the manner provided in the Contract:
> a. Shipper shall, as required, have entered into the necessary contracts with Enbridge and/or others to facilitate the Transportation Services contemplated herein, including contracts for upstream and downstream transportation, and shall specifically <u>have an executed and valid Facilitating Agreement and Interconnect Operating Agreement; and shall, as required, have entered into the necessary contracts to purchase the gas quantities handled under the Contract; and shall, as required, have entered into the necessary firm contract to handle daily imbalances;</u>
> Shipper Conditions: The obligations of Shipper hereunder are subject to the following conditions precedent, which are for the sole benefit of Shipper and which may be waived or extended in whole or in part in the manner provided in the Contract:[14] <u>(emphasis added)</u>

As noted in section 1 d. above, the expectation is for an Interconnect Operating Agreement which does not seem appropriate for ENGLP with EGI as the counterparty. As section 2a. elaborates that the necessary contracts could be with others. But EGI is the only interconnecting party. Therefore, the only mechanism that could be argued is on the record for ENGLP to balance is an "Interruptible HUB" (as described on the Union Gas website) service but this fails meeting ENGLP's need as a utility for <u>firm</u> service in two ways:

1) By its nature, it is interruptible. From a scan of the priority of services listed in the Curtailment section of the contract[15], it is clear that HUB services are not firm and as ENGLP's customer base grows, interruptible services would have a higher probability of being curtailed[16].

2) The HUB services are not available to balance yesterday's imbalances since it is a nominated, confirmed and scheduled service for flow the following gas day which does not satisfy the ENGLP requirement given the post gas day communication of imbalances referenced above.

The practical effect of the contracting, the lack of interconnecting pipeline and nomination windows that close long before the gas day consumption can be measured

[14] Exhibit C, Tab 1, Schedule 1, Page 13 of 17, Clause XXI, 1d) and 2a)
[15] Exhibit C, Tab 1, Schedule 1, Page 11 of 17, Section XVIII
[16] Ibid. The above reference shows that balancing greater than 100GJ/day moves down the priority list reducing the effectiveness of this service especially for a utility needing firm service

or even forecasted accurately is that an imbalance will exist. To that point, Enbridge identified that in its Argument-in-Chief[17] and asserts that through a Facilitating Agreement imbalances can be shifted to a market-based storage account. But the only entity that can produce a Facilitating Agreement is EGI. This leaves ENGLP or any other future competitor, the requirement to deal with the monopoly provider at unregulated rates or face Unauthorized Transportation Overrun charges of over $9/GJ.[18] In our view, the Board ought not allow the monopoly host utility to be in a position to coerce contracting due to the competitors lack of alternatives. In our respectful submission, the Board should reject the M17 rate proposal and allow ENGLP to have service under the existing M9 or T3 rate classes.

DETERMINATION OF ENGLP's CONTRIBUTION COULD BE A HYBRID SOLUTION

Requirement for EPCOR to Pay a CIAC for Owen Sound Line Reinforcement

As noted in our introduction, the Board accepted the withdrawal of the original M17 rate application so that it could be heard with the application for the facilities and the cost consequences to ENGLP. The issue of responsibility for reinforcement costs is especially complex with the policies of EBO 134 (and its stages), EBO 188 and the interaction with community expansion by the incumbent EGI and the new entrant ENGLP.

While FRPO was prepared to present its argument on the issue of reinforcement, our continued collaboration with other intervenors including School Energy Coalition ("SEC") resulted in communications after the EGI AIC and a sharing of draft outlines and arguments prior to submission. As a result of our complete alignment with SEC's submissions, we adopted and support this aspect of their argument.

[17] AIC, page 15, paragraph 51
[18] Exhibit C, Tab 1, Schedule 1, Page 2

ENGLP Can Be Accountable for the Cost of its Station as New Load under EBO 188

Given that the Board can determine separately ENGLP's responsibility for the Owen Sound Line reinforcement, there still remains the issue of ENGLP's responsibility for the customer station. In our view, the determination of responsibility for the cost of the customer station can be a legitimate application of EBO 188. ENGLP is adding new load but there are costs for EGI to provide them service. At the same time, there is margin that will be created as a result of this new load. The calculus for the appropriate responsibility can be EBO 188 and its inherent discounted cost flow analysis of the costs and benefits.

While the Board is most familiar with EBO 188 applications as a result of projects requiring a leave-to-construct, it is an ongoing part of EGI's (including the former legacy utilities EGD and UGL) distribution business to look at any new customer station or distribution project by using the economics of a discounted cash flow analysis[19]. If the costs are not covered by the expected margins from the new load, a Contribution-in-Aid-of-Construction is generated and the customer has the choice whether they want to pay that Contribution for the project proceed. If the costs are covered by the expected margin the calculated profitability index is positive and there is no requirement for customer Contribution for the project to proceed. Whatever the result, the resulting profitability of a proceeding project is pooled with other distribution projects into the respective utility's rolling profitability index.

We understand that the Dornoch station is fed by a transmission main but it feeds a distribution system (outlet of the Dornoch station is 2068 kPa or 300 psig[20] which qualifies as distribution). In our respectful submission, the Board has discretion on the tool that is applied to achieve an appropriate and equitable outcome. Using the results

[19] This application of the economic test to new projects is distinguished from new facilities needed for the replacement of existing facilities due to age, condition or location. In those cases, an economic test is not applied and the capital is drawn from accounts other than New Business.
[20] EB-2018-0263 ENGLP_APPL_SouthernBruce_updated_Redacted_rev_20190228.pdf, Exhibit A, Tab 5, Schedule 1, page 3

of a Board-directed application of EBO 188 for the Dornoch station would ensure long-standing regulatory principles are maintained. Coupled with the approach laid out be SEC, adopted by FRPO, for the cost responsibility for the Owen Sound Line, the Board could separate these issues and provide a just and reasonable result for all parties.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF FRPO,

Dwayne R. Quinn
Principal
DR QUINN & ASSOCIATES LTD.