

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE GAS DISTRIBUTION ACT AND REGULATIONS**

**- and -**

**IN THE MATTER OF AN APPLICATION** by **HERITAGE GAS LIMITED** for approval to amend its franchise area

**BEFORE:** Peter W. Gurnham, Q.C., Chair  
Kulvinder S. Dhillon, P.Eng., Member  
Roberta J. Clarke, Q.C., Member

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**HEARING DATE(S):** October 6 and 7, 2014

**FINAL SUBMISSIONS:** November 12, 2014

**DECISION DATE:** **December 11, 2014**

**DECISION:** **Application approved subject to conditions.**

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## **1.0 INTRODUCTION**

[1] On June 9, 2014, Heritage Gas Limited (“Heritage”) applied to the Nova Scotia Utility and Review Board (“Board”) for approval to amend its existing franchise area to include Antigonish County, Nova Scotia (“Application”). Heritage intends to provide natural gas distribution service through the use of a satellite natural gas system utilizing Compressed Natural Gas (“CNG”).

[2] The Board notified interested parties and invited participation in accordance with an Order dated June 13, 2014.

[3] The Board received Intervenor evidence from Scott J. Rubin, on behalf of the Consumer Advocate (“CA”), and from Brady Ryall and Ken Mills, on behalf of Energy Consultants International Inc. (“ECI”), Board Counsel’s consultant.

[4] Heritage was granted a franchise for a natural gas system in certain areas of Nova Scotia in 2003. Pursuant to s. 10(1) of the *Gas Distribution Act*, S.N.S. 1997, c.4, as amended, a franchise holder may apply to the Board to alter the geographical boundaries of its franchise.

[5] The Board must be satisfied that expansion of a franchise is in the public interest. The test used by the Board is the Community Feasibility Test (“CFT”), discussed later in this Decision, to determine whether to approve the extension of a distribution system to new areas.

## **2.0 ISSUES AND FINDINGS**

### **2.1 Natural Gas Markets**

[6] Heritage has estimated an annual natural gas market of approximately 1.36 million Gigajoules (“GJs”) in Antigonish County. The breakdown for individual customer classes is: 960,000 GJs for customers consuming less than 500 GJs per year;

125,000 GJs for customers consuming between 500 - 9,999 GJs per year; 63,000 GJs for customers consuming between 10,000 - 99,999 GJs per year; and 150,000 GJs for customers consuming over 100,000 GJs per year. Customers consuming less than 500 GJs per year are residential and commercial customers. The other customer categories are mostly commercial and industrial customers.

[7] The details of growth of natural gas consumption over time were also provided by Heritage in its Application. Heritage estimated that the consumption of natural gas along the initially proposed route for construction during the first three years is estimated to be 337,500 GJs per year. In the next phase, which includes the green area on Exhibit B-2 in the Application for development over 10 years, the natural gas consumption is estimated to be 624,250 GJs per year. Over the longer term, for the expansion to the entire County of Antigonish, Heritage estimated natural gas consumption to be 1,360,500 GJs per year.

[8] Heritage has secured commitment from two of its potential large customers in the area with signed Distribution Service Agreements (“DSA”). Heritage noted that by signing these agreements it has met the threshold of 35% revenue requirements to satisfy the CFT. Heritage also explained that based on its experience in the current franchise area, it is reasonably certain that the natural gas market as calculated in the Application will be achieved.

### **2.1.1 Findings**

[9] The Board has reviewed the evidence with respect to the potential gas market in the Antigonish County franchise area. Heritage has secured DSAs with two large customers in the area, which will provide enough revenues to meet the 35%

threshold requirement of the CFT. The Board notes that the two agreements need updating, which Heritage agreed to provide if its Application is approved.

[10] The Board agrees that Heritage has met the test of natural gas market in the proposed franchise area subject to refileing of the two updated DSAs.

## **2.2 Natural Gas Supply**

[11] In response to ECI IR-05, Heritage described its expectations on the availability of natural gas to serve its proposed expansion to Antigonish County:

a) Although Sable will be decommissioned in the future, Encana's Deep Panuke has been producing since late December 2013 in the 200,000 – 300,000 MMBtu/day range (see the M&NP April 2012 - March 2014 production estimates in b) below). Additionally there exists onshore production in New Brunswick from Corridor Resources estimated to be in the 7-8,000 MMBtu/day, which is expected to continue producing through to 2024. Heritage Gas will also have access to other supply areas, as described in c) below.

...

c) In the event Sable and Deep Panuke were not operational in the short, medium, and long term Heritage would source supply from alternate supply points as it has done in the past. These other points are the Western Canadian Sedimentary supply, Dawn Ontario supply or supply from Canaport LNG. Additional US supplies are expected to be accessible by 2017 once pipeline expansions are contracted accessing Marcellus Shale supplies from northeastern Pennsylvania.

d) Heritage Gas does not propose to prioritize Antigonish County over any other customers in Heritage Gas' existing franchise areas. However, the proposed satellite system in Antigonish County will have the benefit of having the ability to access CNG supply sourced from additional locations such as Port Elgin or Fredericton.

e) Currently, the written procedures do not exist between shippers in this region.

[Exhibit H-4, RIR-05]

[12] In its evidence, ECI undertook a review of the natural gas supply available to Heritage, and concluded that there are sufficient alternatives available to Heritage. ECI agreed with Heritage's position that it should have no difficulty in obtaining sufficient natural gas supply for the proposed expansion. ECI also noted that Heritage has been successfully able to supply gas to its customers since 2004, without disruptions.

### **2.2.1 Finding**

[13] The Board is satisfied that there are sufficient natural gas supplies available to Heritage to support the proposed expansion.

### **2.3 Gas Delivery Plan including Distribution Infrastructure, Environmental Impacts and Protection, Operations Coverage, and Emergency Response Time**

[14] Heritage proposes that natural gas will be compressed at its Aerotech Park location in Halifax Regional Municipality and then transported in trailers by truck to a decanting station to be located in Antigonish. The gas will be distributed by pipeline to its Antigonish customers from that point.

[15] Although this plan is simply stated, it gave rise to a number of concerns addressed in the evidence: the type and useful life of the trailers, and whether their numbers are sufficient; supply interruption due to road closures as a result of accidents or weather conditions, and electricity outages; the need for back-up fuel supply; environmental concerns regarding transportation; municipal and other relevant approvals; the location of both compression and decanting stations; operational coverage; and emergency response.

[16] Heritage had investigated several types of trailers and chose one type that, in its opinion, best suited its needs. Heritage amortized the cost of the selected trailers over 20 years, although in the United States, where they are manufactured, they are certified for a 15 year useful life. However, according to Heritage's evidence, it is possible to apply to Transport Canada for an extension of that certification to 20 years.

[17] While a 15 year amortization might be more appropriate, based on the evidence of Arthur Simpson, Manager of Financial Planning and Analysis, the Board is satisfied that the resulting change would not have a material impact on the CFT result.

[18] Heritage outlined its proposed number of trailers to supply the decanting system, and ECI took the position that it was not sufficient. J.P. Astorino, CNG Business Leader, expressed confidence that the number would meet Heritage's self-imposed requirement of a 15 hour supply. ECI believed that there should be an additional trailer. However, as Mr. Astorino testified to Heritage's ability to borrow a trailer from its unregulated business, if required, to maintain this level of supply, Mr. Ryall accepted the 15 hour supply requirement was prudent, as was the plan to borrow, rather than acquire, an additional trailer, if necessary.

[19] In addition to a general concern about the sufficiency of a 15 hour supply of CNG, Mr. Rubin, the CA consultant, expressed specific concern about an interruption of supply:

...there are at least two significant risks of supply disruption to a virtual pipeline in Atlantic Canada. The first would be from road closures or restrictions during severe winter storms, which could disrupt the trucking portion of the supply chain. The second would be from electricity outages that could disrupt the compression portion of the supply chain. Heritage Gas has discussed the potential for the first type of disruption, but it has not even mentioned the potential for extended electricity outages (let alone provided any plans or equipment to deal with such outages). I understand that portions of Nova Scotia recently experienced just such an extended electricity outage because of a severe post-tropical storm, so this is not a theoretical concern.

[Exhibit N-7, p. 8]

[20] In its rebuttal evidence, Heritage confirmed that the trailers are not restricted to class C highways (100 series highways) and therefore can use alternate routes if there are road closures due, for example, to accidents.

[21] While Heritage acknowledged, in response to COHA/CPA IR-13, that the risk of road closures due to weather or highway accidents is "...the most vulnerable aspect of the delivery system...", it outlined the impact of road closures and its contingency plan in response to COHA/CPA IR-14.

[22] With respect to electricity outages, Mr. Astorino testified that at both Aerotech Park and the decanting station in Antigonish, Heritage would have access to standby generators to provide backup power. For the decanting station, a permanent standby generator would be in place. Heritage noted in its closing submission that as the compression station is located near the Halifax International Airport, "...the electricity system in that area is particularly robust" (Heritage Closing Submission, p. 15). For Aerotech, Mr. Astorino said the system is reliable; while no generator is currently installed there, one would be available without difficulty.

[23] The agreements in place with the two large customers in the Antigonish region provide that they will have back-up fuel sources in the event of an interruption. The Board considers this a matter of contract which it need not explore further. The Board did, however, explore this issue as it relates to other customers:

CHAIR:...I guess I'd like to hear, in one answer, all of the reasons why the residential customers, in particular in Antigonish, once they convert, aren't dual-fired unless they have, you know, a fireplace or something, are going to get gas but they're not going to be interrupted.

MR. ASTORINO: So we were designing the system so that it can certainly handle peak day load. We are confident in the number of trailers that we've chosen to serve the system. We have done redundancy over redundancy, if you will. We have two trains -- gas trains that can handle over 90 percent of the peak day flow. So they share them unless we need to do something. And then even on each of those gas trains, we have redundant control valves and those type of things.

So very reliable system from the design perspective.

We're confident that the supply interruptions on the highways will be limited. We have our carrier that we've chosen to work with; they have a very similar operation in terms of number of trucks per day working over the same highways currently. They've had that contract delivering the product, three trips per day, 24/7, 365, for 14 years, and they've never missed a delivery for weather or for road closures.

So we're confident that we have in place the right mechanisms to ensure that we can get gas to Antigonish and keep gas flowing to the smaller customers.

[Transcript, pp. 219-221]



[24] In response to ECI IR- 09(b) to (d), Heritage outlined the requirements of environmental legislation in respect of the distribution pipelines proposed, as well as the trucking of CNG:

b) The proposed project does not trigger a federal environmental assessment (“EA”) under the Canadian Environmental Assessment Act 2012. In Nova Scotia, the trigger for an EA related to natural gas is a pipeline greater than 5km in length that has maximum operating pressures of 500 psi or greater. As the proposed project will have distribution pressures at 100 psi, no EA is required under Schedule A of the EA Regulations. This has been confirmed by staff of the EA Branch of Nova Scotia Environment (“NSE”).

Due to the proposed route and planned pipeline construction technique, the distribution pipeline does not impact areas of ecological sensitivity by drilling under watercourses using horizontal directional drilling (“HDD”) and avoiding wetlands. Accordingly, there will be no requirement for federal approvals from Department of Fisheries and Oceans and Transport Canada nor provincial approvals under Division I Water Approval from NSE to construct the pipeline for natural gas distribution in Antigonish County. If use of HDD is determined to not be technically feasible, appropriate approvals will be sought as required. In addition, it is understood that there is no requirement for an Industrial Approval under Division V – Part 6 Oil and Gas of the Activity Designation Regulations.

c) The vehicle that our contractor has dedicated to our CNG application is a 2014 Kenworth T680 that is equipped with a Paccar MX13 diesel engine with the latest Select Catalytic Reduction (“SCR”) technology that complies with the most recent EPA diesel engine emission standards. As such, the engine is much quieter than traditional diesel engines and the compression brake (engine brake) used to supplement conventional braking is extremely quiet and highly efficient. Our contractor complies with all Provincial driving regulations including only using the compression brake on highways and not in residential areas to minimize the noise experienced by local residents.

d) Heritage Gas entered into a contract with a third party trucking company to haul CNG in the Province of Nova Scotia. Heritage Gas required the company to provide proof of all regulatory authorizations, permits, licences and approvals from all applicable federal and provincial authorities which enable it to operate as a motor carrier in the Province of Nova Scotia. Heritage Gas did not specify exclusive use of vehicles with the pollution and noise abatement technologies beyond what is required by either federal or provincial regulating authorities.

[Exhibit H-4, RIR-09(b) to (d)]

[25] ECI agreed with Heritage’s assessment of the required environmental approvals.

[26] The Board understands that horizontal directional drilling will avoid direct impact to watercourses, and that permits will have to be obtained from the Department of Fisheries and Oceans to accomplish this.

[27] The Board also notes that Mr. Astorino testified that Heritage has encountered no environmental concerns arising out of its unregulated CNG operations.

[28] Heritage's evidence was that it has not yet obtained the necessary municipal approvals, but has engaged in discussion with municipal officials, as outlined in Undertaking U-4.

[29] The exact location of the decanting station has not yet been identified. Ms. Rubin explored with Heritage the necessity to locate it in an appropriate zone, as approved by the Town or Municipality. She questioned, in the COHA/CPA closing submission, whether Heritage's interpretation of the RD-1 zone in fact would permit the use. The Board sees this as an issue to be determined by the relevant municipal unit.

[30] Heritage was also asked if it had examined the possibility of using a compression station located closer to Antigonish which would reduce transportation costs and distances. In response to Undertaking U-5, Heritage identified Salt Springs, Pictou County, as "...the closest, appropriate location to build a new compression facility with which to serve Antigonish customers". However, while transportation costs would be lower, it determined that both operating and capital costs would be higher, with negative impact on the CFT.

[31] The Board is satisfied, as a result, that the use of the Aerotech compression station is most appropriate for delivery of CNG to Antigonish.

[32] According to Heritage's evidence, operating and emergency response staff for the decanting station will be located in the New Glasgow/Stellarton area, and not Antigonish. Maintenance staff will be based at Aerotech Park. As discussed

elsewhere in this Decision, Heritage has an emergency response plan. This was outlined in response to ECI IR-10(b) and (c).

[33] Chris Smith, Vice-President Business Development, and Bill Swan, President, testified that Heritage has a standard of a 60 minute response time, which is similarly applied in other parts of its franchise area. Ms. Rubin questioned whether this was sufficient given the distance between New Glasgow and the Town of Antigonish and, more critically, if Heritage expands to further areas of Antigonish County. This concern was exacerbated by the lack of highway twinning between the areas.

[34] Ms. Rubin concluded:

COHA-NS and CPA recommend that the promised 60 minute maximum response time be established as a service standard. Heritage Gas is obliged to report incidents and the Board should carefully monitor the times of incidents, of notification, as well as the time for mobilization and attendance at site to evaluate whether as a matter of safety, a service centre should be staffed in Antigonish.

[COHA-NS/CPA Final Submission, November 5, 2014, p. 7]

[35] The Board agrees with the recommendation to establish the 60 minute maximum emergency response time as a service standard. However, the Board expects that in emergency situations, in conjunction with local emergency responders, Heritage will use all reasonable efforts to respond in a minimum of time.

### **2.3.1 Findings**

[36] The Board is satisfied, on the balance of probabilities, that Heritage will, through its proposed distribution system, provide continuous, safe and reliable service. The Board, as a condition of its approval, requires Heritage to provide proof from the Town of Antigonish, and the Municipality of the County of Antigonish, if applicable, that the decanting station is a permitted use in the zone where it is to be located, and that the necessary building and development permits have been obtained.

[37] The Board also, as a condition precedent to its approval, requires Heritage to provide proof that all applicable permits relating to environmental issues arising from the construction (including horizontal directional drilling) and implementation of the proposed expansion, and transportation and safety permits from applicable authorities are in place.

[38] Finally, the Board also directs that Heritage apply a maximum emergency response time of 60 minutes as a service standard.

#### **2.4 Socio-economic Impact of the Expansion including Benefits Plan, Public Consultation and Information**

[39] Heritage stated that it currently has approximately 5,200 customers in its franchise area who are benefitting from the use of natural gas, including environmental benefits. The use of natural gas emits 45% less CO<sub>2</sub> than coal and 30% less than fuel oil. Heritage estimated that in 2013 its current customers saved over \$76 million and a CO<sub>2</sub> emission reduction of 200,000 tonnes. An expansion to Antigonish County will provide its customers similar financial and environmental benefits. Heritage estimated that over 10 years, the customers in the proposed franchise area will save approximately \$39 million with the use of natural gas.

[40] Heritage noted that it expects direct and indirect benefits for Antigonish County and Nova Scotia due to the proposed construction and operation of the natural gas system including taxes, fees and economic development. Heritage said that the new franchise area will be included in the Nova Scotia Benefits Report which is filed annually with the Board.

[41] Before filing its Application with the Board, Heritage consulted various stakeholders in the area. These included the Town of Antigonish, the Municipality of the

County of Antigonish, EMOs and other Provincial departments. Heritage also provided an Open House for the general public on May 8, 2014 in the Town of Antigonish with extensive advertisement before the above date. During the Open House, Heritage provided details on the scope of the project, natural gas system and its benefits, and other information. It said that its marketing and customer awareness activities will continue if the Application is approved by the Board.

[42] In response to ECI IR-2, Heritage explained why a separate Socio-Economic Benefit Plan is not prepared for this project.

The Application falls within the exemption provided in the above noted section. Given the nature of this franchise amendment, Heritage Gas is of the view that a Socio-Economic Impact Statement of the nature required by Section 5(c) of the Gas Distribution Regulations is not appropriate or required. Heritage Gas notes that the Application (page 22) does address, in a general way, the socio-economic impact of the proposed expansion.

[Exhibit H-4, RIR-02(a)]

#### **2.4.1 Findings**

[43] The Board notes that under s. 6 of the *Board Gas Distribution Regulations*, N.S. Reg. 85/2002, a Socio-Economic Benefit Study is not required unless the Board so orders. Heritage filed a Nova Scotia Benefits Plan with its original franchise application. It files Nova Scotia Benefits Reports annually, in compliance with the franchise award. The current annual filing of the Nova Scotia Benefits Report by Heritage has been accepted. The Board is satisfied that the expansion of the franchise area will accrue socio-economic benefits similar to those in the current franchise area.

#### **2.5 Feasibility Test including Accuracy of Cost and Revenue Forecasts**

[44] When considering system expansions by Heritage the Board has, since 2003, used two tests to consider economic viability and the potential impact on current ratepayers.

[45] As noted earlier, the CFT is the test the Board uses to determine whether to approve the extension of a distribution system to new areas. Once the system is in place the Board applies the Mains Feasibility Test in relation to gas main and service line extensions.

[46] Heritage, in its Application, also determined that the CFT was the appropriate test to evaluate the expansion to a new franchise area. For purposes of this Application, the Board agrees and has applied the CFT in determining whether to approve the Application.

[47] Whether the CFT needs to be reconsidered in future expansions involving CNG trucking is discussed elsewhere in this Decision.

[48] Simply put, in order to satisfy the CFT, Heritage must prove, on a balance of probabilities, that the project meets a seven year profitability ratio of 1.00 and a 25 year net present value ratio of 1.00.

[49] Critical in determining whether the Application meets the CFT is to determine the reasonableness of both Heritage's revenue forecast and cost assumptions.

### **2.5.1 Revenue Forecast**

[50] Prior to submitting the Application Heritage secured customer commitments from two large customers in the Town of Antigonish with a forecast annualized revenue of approximately \$447,000. Then, based on Heritage's experience with expansions in other areas of the province, Heritage assumed that it would be able to secure (by year seven) about 40% of the potential customers that will have access to natural gas along the proposed pipeline routing.

[51] COHA-NS and CPA argued that Heritage has made assumptions about the attachment rates for residential and other commercial customers but have no firm service commitments noting the fact that the economics, even as presented by Heritage, do not exceed the CFT threshold by much. One or more adverse changes in the revenue assumptions could affect the CFT.

[52] ECI found Heritage's customer revenue forecast to be reasonable citing Heritage's experience in attaching new customers and customer awareness of the environmental and other benefits of natural gas.

#### **2.5.1.1 Findings**

[53] The Board finds it reasonable for Heritage to make certain assumptions on future customer uptake based on the 10 years of experience it has in Nova Scotia to date. The Board accepts the revenue forecast, as submitted by Heritage and endorsed by ECI, as appropriate for determining whether the Application meets the CFT.

#### **2.5.2 Cost of Service**

[54] There was a significant amount of evidence and discussion in the hearing with respect to the appropriateness of various estimates of capital and operating costs with respect to the expansion to Antigonish.

[55] COHA-NS and CPA argued that permitting requirements of the two municipalities, for example, with respect to how the system could be constructed could potentially increase costs. In its Reply Brief Heritage dealt with some of the concerns raised by COHA-NS and CPA.

7. In questioning that result, COHA/CPA raises the possibility of unanticipated costs resulting from use of municipal streets in Antigonish. In that regard, Heritage Gas notes that both the Town of Antigonish and the Municipality of the County of Antigonish have filed letters in support of the Application (Exhibit H-3). Moreover, there is no evidence on the record to indicate that these costs in Antigonish are likely to be any different than those encountered elsewhere by Heritage Gas.

This was also addressed in the Heritage Gas Undertaking U-4:

"Heritage Gas met with the Town of Antigonish and the Municipality of the County of Antigonish in Q1-2014 and Q2-2014 to discuss the proposed satellite distribution system.

Heritage Gas and the technical staff of the Town of Antigonish ("Town") discussed the design and construction of the distribution system. To date, specific permit costs have not been discussed, but general information concerning the typical Municipal Operating Access Agreement ("MOAA") was provided by Heritage Gas to the Town of Antigonish for their information.

Heritage Gas discussed with the Town of Antigonish the use of horizontal directional drill installation techniques in the Town as well as the existing geological conditions. The Town did not identify any issues with horizontal direction drilling or special restoration standards which would require an increase in the costing assumptions utilized by Heritage Gas throughout its financial analysis and CFT."

[Heritage Reply Submission, November 12, 2014, p. 2]

[56] It goes without saying that any change in cost assumptions can have an impact on the CFT. The evidence of Mr. Ryall, on behalf of ECI, was very helpful in putting all of these competing views into context.

[57] In response to Undertaking U-11, ECI made certain adjustments to the assumptions as recommended in ECI's original evidence. The Undertaking explains in general what ECI did:

In response to a Heritage information request of ECI, Request-IR-03, ECI prepared a version of the Community Feasibility Test incorporating modifications to Heritage's assumptions. These modifications were listed on page 29 of ECI's pre-filed evidence (Exhibit H-6). In its Opening Statement, in response to clarifications made by Heritage in its Rebuttal Submission, ECI outlined specific points of agreement in the CFT assumptions. Heritage's oral testimony provided additional information and clarification of certain CFT assumptions. During cross-examination, ECI accepted and agreed with certain additional clarifications and support of Heritage's CFT assumptions.

[Exhibit H-24, p. 1]

[58] The specific issues addressed in the Undertaking were:

1. Property taxes, as a component of Compression Fixed Operating Costs, should be recovered through the CNG rate rider;
2. Pipeline operating costs are forecasted to be \$15,000 in the first year and will escalate according to the embedded inflation factor, irrespective of the number of



customers that attach to the system (that is, there is no need to add incremental pipeline operating costs of \$120 per customer);

3. Heritage plans to rent a CNG trailer from its unregulated operations on days when Heritage anticipates the peak demand of the Antigonish system will be approached. ...

[Exhibit H-24(C), p. 1]

[59] Certain other adjustments were made, some of which include confidential numbers as more specifically outlined in the Undertaking but include, *inter alia*, an adjustment to residential service line costs and main costs, a change to the treatment of certain compression fixed operating costs, the treatment of contingencies and inflation escalations.

[60] The Undertaking recalculated the CFT and concluded that the resulting seven year profitability ratio is 1.01 and the 25 year NPV ratio is 1.07. One element not included in Mr. Ryall's Undertaking response is the cost of renting an additional trailer if needed during peak periods; however, the Board's view is that the cost would not materially change the overall cost assumptions.

[61] The CA described the response to Undertaking U-11 as "a helpful explanation of the assumptions which have been modified so as to yield a pass of the CFT".

[62] COHA-NS and CPA commented on Undertaking U-11 as follows:

On the other side of the ledger from the revenue projections are the cost components. COHA-NS and CPA note that there is not agreement between the consultants on behalf of the Consumer Advocate and Board staff. Scott Rubin has provided evidence to demonstrate that Heritage erred in its assumption of the useful lives of its key equipment (compressors, trailers, regulators, meters). All these items have useful lives of 20 years or less but Heritage neglected to include the cost of replacing the trailers over the 25 year lifetime. Further, the model assumed negative capital costs for the trailers after they are fully depreciated. In Mr. Ryall's evidence, he outlined why an additional trailer was required in order to safely serve the community. In its oral evidence, Heritage asserted that it could "rent" an additional trailer, when needed from the unregulated side of its business. The updated ECI model produced in response to Undertaking U-11 neither includes the cost of an additional CNG trailer, nor the "rental" costs. Including the

additional CNG trailer to meet the peak day demand reduces the 7 year profitability ratio below 1.0.

[COHA-NS/CPA Final Submission, November 5, 2014, p. 6]

### **2.5.2.1 Findings**

[63] At several points during the course of the hearing counsel for Heritage suggested that a “near miss” on the ratio in the CFT calculation would be adequate. The Board does not agree. However, in the Board’s view, the Undertaking supplied by ECI appears to have saved the Application.

[64] The Board accepts, as the best estimate of costs, the Heritage forecast cost projections, as amended by Undertaking U-11 by ECI, and in the circumstances accepts the evidence of ECI that the project narrowly passes the CFT.

### **2.5.3 Future Use of the CFT in CNG Applications**

[65] An issue of concern for the Board is whether there should be amendments to the CFT in circumstances where Heritage is expanding the system using the CNG technology. It would have been unfair to make any amendments to the CFT in the course of this proceeding without Heritage knowing what they were.

[66] However, the Board will ask ECI, as a separate matter, to take a look at the CFT and whether it needs to be reconsidered in any way with respect to CNG expansions.

## **2.6 Rate Base Issues**

### **2.6.1 Allocation of CNG Mother Station and/or Decanting Station Costs between Regulated and Unregulated Businesses**

[67] The CNG compression station which will be used by Heritage to serve Antigonish is located in HRM in the Aerotech Business Park. It currently exists and is

servicing two “unregulated” customers of Heritage. Over time it will need to be expanded to serve Antigonish regulated customers.

[68] In these circumstances there is an issue of how to allocate the capital costs of the station between the unregulated business and the regulated business (Antigonish). Heritage’s proposal is to allocate the compression station and compressor capital costs based on the proportion of demand required by Antigonish customers in relation to the full capacity of the station.

[69] Mr. Rubin, on behalf of the CA, recommended that the regulated CNG business be treated as incremental to Heritage’s existing unregulated business. Under his approach the unregulated business would continue to support the existing capital costs which he stated were incurred solely for the unregulated business and the regulated business (Antigonish) would be assigned only the incremental cost to serve Antigonish.

[70] On cross-examination Mr. Rubin stated:

MR. RUBIN: ... When they built the facility, the only CNG business they had was an unregulated business; that’s the business they chose to participate in. Today all of the costs of that business are unregulated. They did not come to this Board for approval to build the facility. They did not suggest to the Board that that facility was being built to serve future regulated customers. Heritage undertook that investment. That investment for the last two years has been used solely for the service of unregulated customers.

I don’t know what was in Heritage’s head. I don’t know what was in their business plans because we haven’t seen those. All I know is what’s in place today and that’s a facility that exists that is being used solely to serve unregulated customers. And the first the Board learned of that, in any formal sense, was when this application was filed and you said, “Oh, by the way, we have this facility. We’re already using it. We’d like you to pay – you, the regulated customers, to pay some of the costs of that.”

[Transcript, p. 350-351]

[71] Mr. Rubin went on to say that to allow Heritage to allocate the costs as Heritage proposes would work to the disadvantage of competing energy suppliers in the marketplace.

[72] Heritage dealt, in part, with Mr. Rubin's concern in its Rebuttal Evidence as outlined in para. 91 of its Closing Submission:

91. As Heritage Gas stated in its Rebuttal Evidence (Exhibit H-10) at pages 17-18:

"Mr. Rubin recommends that Heritage Gas only be allowed to include incremental investment at the compressor station into rate base under the premise that Heritage Gas built the existing assets solely to serve the unregulated customers.

Heritage Gas disagrees with this recommendation for two primary reasons:

(a) Mr. Rubin's assumption that the existing assets were built solely to serve the unregulated customers is in fact not the case. Heritage Gas originally contemplated that its CNG business would be regulated. With the advent of the Lahey Report and its recommendations, Heritage Gas adjusted its strategy to serve both regulated and unregulated customers.

(b) The economics of running a compressor station of this type depends on achieving a minimum level of economies of scale. Whether the first customers are regulated or unregulated is a moot point. All customers required to achieve efficient use of the planned capacity of the station must be recruited. Each customer, or in this case group of customers, should therefore be allocated a proportionate share of the cost to achieve the economies of scale.

In this instance, Heritage Gas could not serve its regulated customers without the existence of the compression station. It is appropriate that a proportionate share of the asset be included in the cost of service."

[Heritage Closing Submission, November 5, 2014, pp. 27-28]

[73] In the Board's view, there are some unique contextual facts that need to be taken into account in determining this issue.

[74] The Board accepts that Heritage originally intended to serve its CNG customers as part of its regulated franchise. Indeed, Heritage applied to the Board to expand its franchise territory to include Hantsport. The other customer is already within Heritage's franchise territory. As noted by Heritage, as a result of certain actions taken

by Government in response to that application, Heritage proceeded to serve those customers on an unregulated basis. Recent amendments to the *Gas Distribution Act* would give an option to Heritage to roll those customers into the regulated business with a further franchise amendment.

[75] In any event, the Board accepts Heritage's evidence that it did not set out originally to set up an unregulated CNG business separate and apart from the gas franchise. Mr. Rubin may not have been aware of all of these facts.

[76] ECI, in its evidence, agreed with the allocation of compression station costs as proposed by Heritage:

The CNG compression station will be used by both the regulated and unregulated CNG businesses of Heritage. As such, the capital costs of the station must be appropriately allocated between these businesses. Heritage proposes to allocate the compression station and compressor capital costs based on the proportion of demand required by Antigonish customers in relation to the total capacity of the station. As the customer demand in Antigonish grows over the years, the capital allocated to Antigonish will increase. In ECI's view, this is an appropriate methodology to allocate the CNG compression station costs to the regulated business serving Antigonish.

Heritage's proposed allocation methodology is more appropriate than allocating on the basis of the relative proportions of regulated and unregulated demand. This is because the unregulated business could have large swings in demand as customers are added or subtracted. Under the latter methodology, if Heritage lost all of its unregulated customers, the regulated customers would potentially be charged the full capital of the station. Heritage's proposed allocation is simpler and fairer, because it does not rely on determining the current demand of its unregulated CNG customers.

...

Heritage allocated compression station and compressor capital each year in the CFT, identifying the incremental allocations as the capital expenditures for each year. ECI agrees with the proposed allocations in the CFT.

[Exhibit H-6, p. 14]

### **2.6.1.1 Findings**

[77] The Board acknowledges Mr. Rubin's concern to be a legitimate one; however, on balance, given the manner in which the unregulated business unfolded and accepting the opinion of ECI, the Board agrees that, in this situation and based on these

facts, Heritage's proposed allocation methodology is an appropriate methodology to allocate the CNG compression costs to the regulated business serving Antigonish.

### **2.6.2 If Heritage Installs a Pipeline to Antigonish - What Happens to Rate Base Items (decanting station, trailers)?**

[78] A collateral question was raised as to what happens in the, *albeit* unlikely, event that Heritage installs a pipeline from the Maritimes and Northeast Pipeline to Antigonish (a project which currently is not economic).

[79] The Board views that as speculative and will deal with the rate base questions (ie., the rate base treatment of the compressor, decanting station and the trailers) if and when that happens. Clearly, if it did happen, certain of the assets would be no longer used and useful; however, the Board reserves on that issue.

### **2.7 Rates including Rate Rider**

[80] In its Application, Heritage noted that the capital structure is unchanged from that previously approved by the Board and additionally, the existing Board approved rate structure would continue to apply to Antigonish customers. Capital costs, including CNG capital costs would be recovered within that framework.

[81] Heritage proposed that a rate rider mechanism would be adopted to recover those operating costs which will be unique to CNG, for all Antigonish County customers regardless of rate class. The proposed rate rider was \$2.80 per GJ to include recovery of fixed and variable compression costs, and transport cost.

[82] The items contributing to the amount of the rate rider were examined in detail by ECI during the hearing. In its post hearing submission Heritage agreed that the rate rider should be set at \$2.75 per GJ after adjusting for land lease, transportation, yard maintenance and security.

[83] The rate rider concept was explored during the hearing and the CA expressed some concern as to whether or not it was the best approach to accounting for the unique costs associated with CNG compression.

[84] In its post hearing submission, the CA noted:

Heritage has chosen to structure its Antigonish service as an expansion of Heritage's current franchise. While this structure may offer various benefits to Heritage, it comes with the obligation, pursuant to Section 16 of the Gas Distribution Regulations requiring utilities to have "a single franchise-wide rate, toll or charge for gas transportation services to each customer class of a franchise holder".

In his evidence (H-7), Mr. Rubin has provided the regulatory policy justification for single tariff pricing. Mr. Rubin has made recommendations that allow the Board to remain aligned with single tariff pricing, while providing Heritage with the necessary revenue to undertake the expansion to Antigonish. This is accomplished by requiring customer contributions spread over a lengthy period.

[CA Final Submission, November 5, 2014, p.3]

[85] COHA/CPA did not object to the rate rider *per se*, but expressed concern that the amount of the rider and the method of calculation were confidential. This is discussed elsewhere in the Decision.

[86] ECI supported the concept of a rate rider:

ECI agrees that charging the customers in Antigonish a rate rider to recover the additional costs of CNG transportation is appropriate and is not unduly discriminatory. The rate rider discriminates based on location, but it is not unduly discriminatory because Heritage will incur different costs to serve this location. ECI agrees with Heritage that customers should bear the costs of the services they use.

[Exhibit H-6, p. 4]

[87] Heritage, in response to an IR from ECI, stated:

Heritage Gas will revise the rate rider annually based on the best available estimates of costs and allocators for the upcoming year as well as any variance incurred in the current year. Using these estimates, Heritage Gas will calculate the rate rider using the methodology described in the application. Please also refer to COHA/CPA-IR-16.

[Exhibit H-4, RIR ECI, IR-22(d)]

[88] In response to IR-16 from COHA/CPA Heritage noted:

The Rate Rider will be set annually by:

- Correcting any outstanding overage and underage between actual costs and revenues collected by Heritage Gas in the previous 365 days;
- Projecting the costs to be incurred by Heritage Gas in the upcoming year on the basis of estimated expenditures with consideration of Statistics Canada Consumer Price Index (CPI) for Nova Scotia.

Changes in the price of gas or diesel for truck transportation will be considered as part of the annual process for determining whether a change is required in the rate rider.

[Exhibit H-5, RIR COHA/CPA, IR-16]

[89] Also in its Application, Heritage requested approval for an amendment to the Rate Class 3 billing demand calculation, to be applied to customers on the CNG satellite system. Specifically, Heritage proposed that the Rate Class 3 ratchet mechanism would not be applied. Currently there is only one Rate Class 3 customer identified.

[90] In Heritage's Schedule of Rates, Tolls and Charges, Rate Class 3 billing demand is calculated as the greater of:

1. 225 GJ per month
2. The Contract Demand
3. The greatest amount of gas in GJ in any consecutive 24-hour period during the current and preceding eleven billing periods.

[91] Heritage's request is to restate item 3 as:

3. The greatest amount of gas in GJ in any consecutive 24-hour period during the current billing period.

[Exhibit H-5, RIR-25]

[92] ECI requested additional details regarding the ratchet mechanism in ECI-IR-24. ECI subsequently supported the change, with a condition:

ECI supports the proposed change in the RC3 tariff for customers in Antigonish on the condition that any DSAs signed with other Antigonish RC3 customers include a Maximum Daily Delivery Limit that protects Heritage from incurring additional capital costs without contributions from the RC3 customer towards same costs.

[Exhibit H-6, ECI Evidence, p. 35]



### **2.7.1 Findings**

[93] The *Gas Distribution Regulations (Nova Scotia)*, N.S. Reg. 86/98, as amended, s. 16 state:

16 (1) The Board shall create a single, franchise-wide rate, toll or charge for gas transportation services to each customer class of a franchise holder.

(2) In subsection (1), “customer class” means a group of customers with similar or like requirements for gas transportation services, as determined by the Board.

[94] It is the Board’s view that customers who are served by a CNG satellite system do not have “similar or like requirements for gas transportation services” compared to customers who are served by pipelines and can therefore be considered a different customer class. With that in mind, it is acceptable to have a rate specific to that customer class.

[95] The Board accepts the rate rider as preferable to customer contributions as proposed by Mr. Rubin, given that the CFT has been met and in light of the Board’s view that “single tariff pricing” does not preclude a rate rider. Further, the concept of a contribution spread over some years means it would end at some point; however, ongoing operating costs would continue and would still need to be recovered.

[96] The Board accepts the rate rider calculation methodology and approves the amount of the rate rider at \$2.75 per GJ.

[97] The Board accepts the Rate Class 3 amendment as proposed by Heritage, with the condition as stated by ECI, above.

### **2.8 RDA Impact**

[98] The Revenue Deficiency Account (“RDA”) was approved by the Board in 2004 as a means to facilitate expansion of natural gas in Nova Scotia and recover its costs over a longer period and from customers who will use the infrastructure being

constructed by Heritage. The Board reviewed the RDA issue again in its 2010 Decision [2010 NSUARB 127] and ordered a limit on the RDA amount and also a timeline to eliminate the RDA, to protect future customers.

[99] Heritage explained that based on the CFT included in the Application, the expected revenues in year seven are more than the revenue requirements which will start reducing the RDA. The Application stated that the RDA created by the project is expected to be paid off within 10 years. The maximum amount of RDA is expected to be \$0.7 million.

[100] ECI, in its Pre-filed Evidence, noted that expansion of the franchise area to Antigonish County “does not materially impact the RDA balance and does not affect the year the RDA is scheduled to be retired” [Ex. H-6, P. 32].

### **2.8.1 Finding**

[101] The Board finds that the impact on the RDA from the expansion of franchise to Antigonish County is minimal. Its retirement date will not be materially affected.

## **2.9 Local Education Respecting Gas Distribution Pipelines (i.e., “Call Before you Dig”)**

[102] In closing submissions, concerns were expressed by both the CA and COHA/CPA about the safety of the proposed delivery system. COHA/CPA also expressed concerns about the siting of the decanting station. However, the public safety aspect of education regarding distribution pipelines was not canvassed at the hearing. Only Heritage addressed this issue in its closing submission.

[103] Heritage has described its program for public safety in its Application thus:

Heritage Gas has developed and implemented a public safety program. Heritage Gas makes members of the public aware of the natural gas system and keeping them safe in

its use. The promotion of "Natural Gas Safety" educational awareness coincides with the system rollout in new areas with emphasis on presentations to underground contractors and construction and trade associations, municipal operations staff, emergency response personnel, schools, etc.

The Heritage Gas "Call Before You Dig" facilities locate service has the best response time among utilities in the province, with a typical response within 48 hours. The service is provided during regular hours and on an emergency basis to ensure those who might impact our system have timely access to information about the location of Heritage Gas' infrastructure.

[Exhibit H-1, p. 15]

[104] In response to ECI-IR-10, Heritage elaborated on how it proposes to extend its "Call Before You Dig" program to the proposed franchise area through various print media, radio advertising, signage, and direct communications with local contractors, excavators and municipalities, including training, and site visits.

[105] In the same response, Heritage also described the proposed handling of emergency response through its own technicians based in the New Glasgow/Stellarton area, and training and joint exercises with local first responders and fire departments.

[106] The Board notes that ECI had commented in its evidence on the public awareness program employed by Heritage and its "Call Before You Dig" program. ECI expressed no concerns about this issue.

### **2.9.1 Finding**

[107] Accordingly, the Board is satisfied that Heritage will extend its existing programs to the proposed franchise area, and ensure appropriate and continuing communication and training with relevant parties to ensure public awareness and safety.

## **2.10 Franchise Territory and Term**

### **2.10.1 Franchise Area**

[108] Heritage seeks approval for expansion of its franchise to the entire region of Antigonish County, although from the evidence of its panel at the hearing, it intends initially to serve a much smaller area, and then expand as it becomes economically feasible to do so. Mr. Swan described seeking the franchise for the larger area as consistent with the approach Heritage has used in Nova Scotia saying it "...saves us from having to come back on an ongoing basis to expand the boundaries of the franchise" (Transcript, p. 22).

[109] Mr. Smith confirmed the proposed phases of expansion which were consistent with the Responses to COHA/CPA IRs-01(b) and -02.

[110] Ms. Rubin suggested that Heritage was over-reaching geographically in requesting the franchise for the entire County, given that it had no plans to serve the whole area by the end of the 10 year period identified in Section 7(k) of the *Board Gas Distribution Regulations*. The phased areas do not extend that far, and COHA/CPA argued that this would restrict competition. She urged the Board to restrict the boundaries of the franchise area.

[111] In its closing submission, Heritage noted that its plans are to gradually and economically extend service in the County, and noted that the build-out plans might change from its initial projections, depending on the manner in which the market develops. This was the case in Cumberland County.

[112] Further, Heritage rejected the argument of COHA/CPA that granting the franchise to the full County would be a disincentive to customers who want to be served by non-regulated suppliers of CNG.

[113] ECI discussed the franchise area in its evidence, stating:

Section 5(1)(a) of the Regulations requires the Applicant to demonstrate that there is a reasonable likelihood of serving the proposed franchise area within a period of 10 years. Heritage explained its plans to serve the areas identified in Attachment B-2 of the Application. Heritage applied for amendments to its franchise boundaries to include all of Antigonish County, but Heritage does not have any plans to serve any areas outside of those identified in Attachment B-2 within those 10 years. If the Board decides to grant a franchise to Heritage, it may consider alternative geographic boundaries of the franchise.

It has not been the practice in Nova Scotia to award a gas distribution franchise along boundaries other than county or district boundaries, but this is commonplace in Manitoba where franchise boundaries are set at the section or even quarter-section level. [Emphasis added]

[Exhibit H-6, p. 4]

[114] During the hearing, Mr. Ryall elaborated on this:

MS. RUBIN: At the bottom there's a discussion of franchise boundaries, and you note that:

"Section 5(1)(a) of the Regulations requires Heritage Gas to demonstrate there is a reasonable likelihood of serving the proposed franchise area within 10 years." (As read)

What's the purpose of this type of condition?

MR. RYALL: It's generally to prevent a utility from obtaining a -- obtaining its monopoly to provide a service over a larger area that has no intention of actually providing the service. And I suppose to -- the -- well, I suppose the legislators didn't want utilities obtaining a monopoly area and not wanting to serve those areas and precluding somebody else from coming in and offering a similar service.

MS. RUBIN: And what evidence have you reviewed to show the entire county will be served within a reasonable -- within 10 years?

MR. RYALL: Well, Heritage has given us the maps in its application that show the areas that it does intend to serve. That said, this requirement generally doesn't require a utility to serve each and every customer within a franchise area. There's a bit of balance that a utility is only required to extend service where it's economic to do so.

And if it's -- this is now just going to my own opinion and not so much what maybe the legislators were thinking, but if it's not going to be economic to extend service to other areas, it may or may not matter whether the franchise is extended that entire area.

It's not likely somebody else is going to be able to come in and provide gas service to the far reaches of Antigonish County; if Heritage can't do it, nobody else can do it economically.

MS. RUBIN: I think the evidence yesterday from Heritage, I'm paraphrasing, that the reason that -- part of the reason they requested the entire county was for regulatory expediency to avoid coming back to the Board to expand their franchise. Is that your understanding of the evidence from yesterday?

MR. RYALL: I think that's fair.

MS. RUBIN: And is that a reasonable basis to award a franchise for the entire county?

MR. RYALL: I presented some experience from my home province, Manitoba, that the boundaries for franchises are often set at a smaller, more discrete, level than what Heritage is proposing along county boundaries.

But even in Manitoba now the municipality and the gas utility themselves have both been on recent franchise expansions have been suggesting that the borders go to the -- the full border of the rural municipality for exactly that reason, regulatory expediency.

There's only one gas utility in Manitoba, and whether or not those customers -- and these would be very rural customers. Whether the gas company could ever serve them isn't a question that's decided in these franchise applications. It's, "Let's just do this once and then the company, if it can, will provide service." [Emphasis added]

[Transcript, pp. 463-466]

[115] Heritage noted Mr. Ryall's comments about the expansion of franchise areas in Manitoba, and also noted the difficulty in defining boundaries with certainty if the Board were to limit the franchise area to something less than the entire County.

[116] Ms. Rubin suggested that the Board should not decide to extend the boundary to all of Antigonish County on the basis of "regulatory expediency".

[117] The Board notes that, while the CA did not specifically address the franchise area, his consultant, Mr. Rubin, stated his support for the franchise expansion into Antigonish County, although his evidence, as discussed earlier in this Decision, made it clear that he had significant concerns about the need for customer contribution and the CFT.

[118] The Board also notes that one of the storyboards at the public information sessions which Heritage held in Antigonish clearly showed the proposed development areas over the next ten years (Response to COHA/CPA IR-21(a), Attachment 1).

[119] The Board is aware that, at the time of the Heritage Application, Strait Area Gas Corporation held a franchise to supply natural gas which included an eastern portion of Antigonish County. Strait Area Gas Corporation had not taken any action

pursuant to its franchise award. It applied to the Board on October 7, 2014 to surrender its franchise as it was unable to satisfy the conditions precedent. The Board notes that an Order accepting the surrender of the franchise, which would have conflicted with the proposed Heritage franchise, was issued on November 24, 2014.

#### **2.10.1.1 Findings**

[120] On balance, the Board favours the granting of the expansion of Heritage's franchise to the entire County. It does so because it is a clearly and simply defined area, and because it agrees with Heritage that build-out of the market may develop in ways which are not necessarily initially predicted.

[121] The past practice of the Board, with respect to Heritage, has been to award a franchise based on county boundaries with the exception of Hants County where it is based on municipal units.

[122] The Board also observes that regulatory efficiency is, generally, a desirable outcome, and in the public interest. Further, the Board is not persuaded, on a balance of probabilities, that expanding the franchise area as requested by Heritage will restrict competition, as suggested by Ms. Rubin.

#### **2.10.2 Franchise Term**

[123] The current franchise held by Heritage was awarded in 2003 for a 25 year period. It will expire in July, 2028. There are, therefore, 14 years remaining in the life of the franchise.

[124] The Board notes that Heritage has said it would expect to seek renewal of the franchise at the end of the term.

[125] Although, in referring to the franchise term, Ms. Rubin submitted that "...Heritage's delivery plans should be reflective of the time within which it has to serve

the applied-for County” (COHA/CPA Closing Submission, p. 2), the Board understood this to relate to the economic analysis employed in the CFT.

#### **2.10.2.1 Finding**

[126] No party made any submissions on the term for which the Board should grant the expansion of the franchise, and the Board sees no reason why the term should not be aligned with the remaining franchise term. Therefore, the Board will approve the term of the Antigonish expansion to coincide with the original franchise award, i.e., to July, 2028.

#### **2.11 Timetable**

[127] In its Application, Heritage had estimated the proposed expansion would begin in the second quarter, with an in-service date in the third quarter, of 2015. In its closing submission, Heritage referred to its original contemplation of the commencement of construction in the fourth quarter of 2014, and stated that it had subsequently revised the timeline in response to ECI-IR-31(a). The revision was based on receiving Board approval of the proposed franchise expansion by November 30, 2014, but is the same as that stated in the Application. Heritage maintained the view that these dates would be unchanged; however, it noted that it would still need to obtain Permits to Construct from the Board before further refining major milestones in its timetable.

#### **2.12 Confidentiality**

[128] Several parties raised concerns with respect to the extent of confidential material filed by Heritage in this proceeding. Indeed, the Board itself raised the issue during the hearing.



[129] Ms. Rubin, counsel for COHA-NS and CPA, faced a particular problem in that her clients were not given access to confidential material although she was, pursuant to a Confidentiality Undertaking.

[130] Ms. Rubin stated:

Here, the extent of confidential material was not challenged prior to the Hearing. However, upon review of the record and preparation for hearing, it became evident that the extent of redactions was much too extensive. Heritage took advantage of the redactions far beyond what was appropriate and rode rough over the principle of openness. Furthermore, it was not applied consistently. The examples given in this brief were only two: the names of the customers anchoring the proposed franchise extension and the location of the initial build-out of the lines – both of which have been publically discussed. Heritage asserted confidentiality over the rate rider itself and in certain Responses to IRs, redacted the description of the components to build up the rate. While the dollar value of the cost components may attract confidentiality, there is no reason the generic categories of inputs should be confidential. One can even query whether the dollar inputs should be confidential when a perusal of the public decision reporting on the virtual pipeline application by Heritage's sister company in the Dawson Creek-Tumbler Ridge case outlines all of the same cost inputs which Heritage has redacted. In fact, these cost inputs – publically reported – were used by Mr. Ryall in doing his comparative analysis.

Heritage's over-zealous redacting unduly hampered a proper review by individuals, including by my clients. It was only during cross-examination that Heritage acknowledged that the public could be made aware that operating costs included such items as land lease, transportation and marketing (as outlined in ECI response to U-11 but redacted in the Application and ECI evidence).

...

The point of a hearing is precisely so that there can be a debate and discussion under the cleansing gaze of the public. A transparent hearing gives confidence that the Board has done its job and that the pros and cons have been fully debated. A process by which the components of the rate and the rider itself are secret until such time as the rider is blessed by the Board does not fulfil the public's interest and such a process does more to create an "incorrect perception" than an open one. Most startlingly, Heritage asserted that should the franchise application be refused, the rider should never be disclosed. This demonstrates the fundamental misunderstanding that Heritage has respecting the public's interest in openness.

[COHA-NS/CPA Final Submission, November 5, 2014, pp. 9-10]

[131] Likewise, the CA stated:

The Consumer Advocate shares the concern regarding an over-zealous use of confidentiality cloaking by Heritage. In future applications, the Consumer Advocate intends to more vigilantly monitor claims of confidentiality to ensure compliance with the well-established Board procedures.

[CA Final Submission, November 5, 2014, p. 9]

[132] In its Rebuttal Submission, Heritage seemed to concede that this was a legitimate concern.

[133] As noted by Ms. Rubin, because of the widespread use of Confidentiality Undertakings in Board proceedings, sometimes the Board and the parties are not vigilant enough with respect to policing confidential filings.

[134] However, it is important to remember that this is a public process and Heritage's customers, the public and media need to have reasonable access to the evidence.

[135] This means that only those matters that must be confidential should be filed in confidence under Board *Rule 12*.

[136] In future, the Board and Board staff will be more vigilant in reviewing Heritage's confidential filings.

### **2.13 Conditions**

[137] The following conditions shall apply to the Antigonish County franchise amendment:

- (1) Heritage shall update and refile the two Distribution Service Agreements.
- (2) Heritage shall provide proof from the Town of Antigonish, and the Municipality of the County of Antigonish, if applicable, that the decanting station is a permitted use in the zone where it is to be located, and that the necessary building and development permits have been obtained.
- (3) Heritage shall provide proof that all applicable permits relating to environmental issues arising from the construction (including horizontal directional drilling) and implementation of the proposed expansion, and transportation and safety permits from applicable authorities are in place.

- (4) CNG trailers are not to be rented to Heritage's unregulated business if that would jeopardize reliability of supply to Antigonish.
- (5) Heritage shall document each time a trailer is rented from or to the regulated business and include this in the annual Inter-Affiliate Code of Conduct Report.
- (6) Heritage shall notify the Board if and when it is known that:
  - a. Costs (capital and/or operating) will exceed forecast
  - b. Revenues will be less than forecast
  - c. Project timing changes compared to forecast
- (7) Heritage shall notify the Board if horizontal directional drilling method is not allowed or not possible for all or any portion of the project where HDD was proposed, accompanied by any cost and/or schedule impacts.
- (8) Heritage shall track the project's impact on the Revenue Deficiency Account and include a report in its annual financial filings to the Board.
- (9) Heritage shall apply a maximum emergency response time of 60 minutes as a service standard.
- (10) Any DSAs signed with other Antigonish Rate Class 3 customers shall include a Maximum Daily Delivery Limit that protects Heritage from incurring additional capital costs without contributions from the RC3 customers towards those costs.

### **3.0 SUMMARY**

[138] The Board approves Heritage's Application, subject to the conditions outlined above. What follows is a summary of the Board's findings:

- Heritage has met the test of natural gas market in the proposed franchise area subject to refiling of the two updated DSAs.

- There are sufficient natural gas supplies available to Heritage to support the proposed expansion.
- Heritage will, through its proposed distribution system, provide continuous, safe and reliable service.
- The expansion of the franchise area will accrue socio-economic benefits similar to those in the current franchise area.
- The revenue forecast, as submitted by Heritage, is appropriate for determining whether the Application meets the CFT.
- Heritage's forecast cost projections are accepted.
- The project passes the CFT.
- Heritage's proposed methodology to allocate CNG compression costs to the regulated business serving Antigonish is appropriate.
- An initial rate rider of \$2.75 per GJ is approved and the rate rider calculation methodology is accepted.
- The expansion of the franchise area will not materially impact the RDA.
- Heritage will extend its existing public safety programs to the proposed franchise area, and ensure appropriate and continuing communication and training with relevant parties to ensure public awareness and safety.
- The Antigonish franchise expansion will include all of Antigonish County, and the term will coincide with the original franchise award, i.e., to July, 2028.

[139] An Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 11<sup>th</sup> day of December, 2014.

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Peter W. Gurnham

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Kulvinder S. Dhillon

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Roberta J. Clarke