



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

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## DECISION AND PROCEDURAL ORDER NO. 2 EB-2016-0004

### ONTARIO ENERGY BOARD

GENERIC PROCEEDING ON NATURAL GAS EXPANSION IN  
COMMUNITIES THAT ARE NOT SERVED

**BEFORE: Ken Quesnelle**  
Vice Chair and Presiding Member

**Cathy Spoel**  
Member

**Paul Pastirik**  
Member

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March 9, 2016

## 1 INTRODUCTION AND SUMMARY

In the Ontario Government's 2013 Long-Term Energy Plan, the Government indicated that it would look at opportunities to expand natural gas service to communities in Ontario that are not currently served. On February 17, 2015, the Ontario Minister of Energy in a letter to the Chair of the Ontario Energy Board (OEB) encouraged the OEB to examine opportunities to facilitate access to natural gas services to more communities. On February 18, 2015, the OEB issued a letter stating that it will hear requests for regulatory flexibility or appropriate exemptions in the context of an application made for approvals pertaining to expansion projects. The OEB invited parties with the appropriate technical and financial expertise to propose, within their application, any options to address these regulatory issues.

In response to the letter, Union Gas Limited (Union) filed an application (EB-2015-0179) in July 2015 with the OEB seeking approval to provide natural gas service to certain communities that do not have access to natural gas. In that application, Union proposed alternative approaches to recover revenues in order to meet the investment needs to expand natural gas service to certain communities in Ontario.

Union indicated that under its proposal, it could complete approximately 29 projects to provide natural gas service to 18,000 homes and businesses in 34 communities at an estimated cost of \$135 million. In its application, Union requested approval for rate recovery of four specific projects and leave to construct approval for three of the four projects.

In Procedural No. 2 issued on November 30, 2015, the OEB determined that it would be most efficient to consider the various elements of Union's application in a staged manner. The OEB determined that it would first address the proposed funding mechanism and consideration of the related leave to construct applications would be dealt with later in the context of the OEB's determinations on Union's proposed funding approaches.

The OEB held a Pre-Hearing Day on December 18, 2015, where it heard from the different parties on the evidence that they expected to file and the relevance of that evidence to the proceeding. Based on the submissions of the parties at the Pre-Hearing conference, the OEB through a letter dated January 20, 2016, informed all parties that it intended to proceed with a generic hearing on its own motion as the issues raised by all the parties were common to all gas distributors and new entrants seeking to provide gas distribution services in communities that do not have access to natural gas. The OEB noted that a generic proceeding would allow it to establish a common framework and

provide guidance to all entities that wish to provide gas distribution services in communities across Ontario.

The OEB also noted in that letter that Union's application (EB-2015-0179) would be put on hold until the completion of the generic hearing. The OEB further indicated that all intervenors in Union's community expansion application would be deemed as intervenors in the generic hearing.

## 2 THE PROCESS

The OEB issued a Notice of Hearing for the generic proceeding (Notice) on February 5, 2016 and it was served on all parties in EB-2015-0179, the clerks of municipalities, First Nations and intervenors in Union and Enbridge rates proceedings. The Notice was published in newspapers across Ontario. The last date to submit intervention requests was February 22, 2016.

The Notice informed the parties that Union's community expansion application and evidence would form part of the record of the generic proceeding. A draft Issues List was included along with the Notice. The draft Issues List broadly defined the scope of the proceeding and identified the issues that would be considered in the generic proceeding.

The OEB issued Procedural Order No. 1 on February 10, 2016 that established a process and timelines for parties to file evidence and discovery of that evidence. Comments on the draft Issues List were due on February 26, 2016.

The OEB received a number of interventions from interested parties and municipalities, the list of which is provided below:

- Advancing Northwestern Economic Development Through Energy Competitiveness Group (ANEDTEC)
- Chevalie de Colomb du Conseil 9929
- Corporation of Norfolk County
- Environmental Defence Canada Inc.
- GreenField Specialty Alcohols Inc.
- Independent Electricity System Operator
- Mississaugas of the New Credit First Nation
- MoCreebec Eeyoud
- Municipality of East Ferris
- North Vista Advisors
- Northwestern Ontario Associated Chambers of Commerce Coalition (NOACC)
- Ontario Geothermal Association (OGA)
- Ontario Petroleum Institute (OPI)
- Ontario Sustainable Energy Association (OSEA)
- Parkland Fuels Corporation
- The Corporation of the Municipality of Dutton Dunwich
- The Corporation of the Municipality of Sioux Lookout
- Township of Augusta
- Township of Edwardsburgh Cardinal

- Township of Perth East
- Township of Warwick
- Union Gas Limited
- Utilities Kingston

The OEB has already deemed intervenors in EB-2015-0179 as intervenors in the generic proceeding and those found eligible for cost awards in EB-2015-0179 are also eligible for costs awards in the generic proceeding.

Each of Environmental Defence, Mississaugas of the New Credit First Nation, MoCreebec Eeyoud, NOACC (and Common Voice Northwest - part of the NOACC Coalition), OGA, OSEA and ANEDTEC applied for cost award eligibility in this proceeding.

### 3 OEB DECISION

#### Decision on Cost Eligibility

The OEB grants intervenor status to all parties that requested intervention in this proceeding, the list of which is provided in Schedule A to this Decision and Procedural Order.

The OEB also finds that each of Environmental Defence, Mississaugas of the New Credit First Nation, MoCreebec Eeyoud, NOACC (and Common Voice Northwest - part of the NOACC Coalition), OGA and OSEA is eligible to apply for an award of costs under the OEB's Practice Direction on Cost Awards.

Consistent with section 3.05(i) of the Practice Direction, the OEB finds that ANEDTEC and the Municipality of East Ferris are not eligible for an award of costs. The law firm Weilers Law represents NOACC, Common Voice Northwest (CVNW) and Northwestern Ontario Municipal Association (NOMA) and seeks cost eligibility for NOACC and CVNW. The OEB also notes that although NOACC represents businesses throughout the northwest region, CVNW is an alliance between NOMA and NOACC. Municipalities are generally not eligible for cost awards pursuant to the Practice Direction and therefore NOACC's cost eligible participation will be limited to representing its consumer members. NOMA is not eligible for an award of costs, and any cost claim should exclude time spent representing NOMA.

Cost eligible intervenors should be aware that the OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party, unless a compelling reason is provided when cost claims are filed. The OEB also expects that intervenors will combine their efforts with those of similarly interested parties, will co-operate with all other parties to the extent possible and will be mindful of avoidable duplication. The OEB cautions all cost eligible intervenors that intend to engage consultants or experts to prepare independent reports that the OEB will not provide costs if it is determined that the study is out of scope of the proceeding or does not pertain to the Issues List. Parties need to ensure that any study or report must be of assistance and value to the OEB in terms of considering an appropriate framework for providing natural gas services in communities that are not served.

#### Decision on Issues List

The OEB received several comments on the draft Issues List from parties. Some of the comments were general in nature providing additional commentary on the issues or context to some of the issues. However, some comments were very specific and

recommended edits to the description of the issues as noted in the draft Issues List or recommended the addition of new issues.

#### Issues # 1

*Does the OEB have the legal authority to establish a framework whereby the customers of one utility subsidize the expansion undertaken by another distributor into communities that do not have natural gas service?*

Energy Probe in its submission suggested that the wording of the above issue was inappropriate and should be dropped from further consideration. Energy Probe noted that rates are set by the OEB under section 36 and in Energy Probe's view meet, inter alia, the requirement that they are just and reasonable and reflect the costs to the utility of providing gas distribution services to its customers. Energy Probe submitted that there is no case either on ratemaking principles or through OEB legislation that would allow ratepayers of one utility to subsidize the rates of another.

The OEB finds that Energy Probe's submission is in effect its position on the "answer" to this issue, and would be more appropriate for final argument than a submission on the scope of the issues before the OEB in this proceeding. The OEB does not agree that the answer to the issue is self-evident, and will not remove it from the issue list for this reason.

NOACC recommended further broadening of Issue #1 and reworded the issue as.

**Does the OEB have legal authority to establish a framework where all ratepayers (including electricity ratepayers in certain instances) subsidize expansion of natural gas service to remote or rural communities, irrespective of which utility undertakes the proposed expansion?**

The OEB will not make any change to Issue #1. The generic hearing is an outcome of the OEB's initial invitation that resulted from Union's application on community expansion. The OEB sees no reason to further expand the scope of this issue by including electricity ratepayers. NOACC can address this issue in final arguments if it wishes to do so.

#### Issue #2

*Based on a premise that the OEB has the legal authority described in Issue #1, what are the merits of this approach? How should these contributions be treated for ratemaking purposes?*

Issue #2 is a subset of Issue #1 and the OEB will not be making any changes to the issue.

Issue #3

*Should the OEB consider exemptions or changes to the EBO 188 guidelines for rural and remote community expansion projects?*

- a. Should the OEB consider projects that have a portfolio profitability index (PI) less than 1.0 and individual projects within a portfolio that have a PI lower than 0.8?*
- b. What costs should be included in the economic assessment for providing natural gas service to communities and how are they to be determined and calculated.*
- c. What, if any, amendments to the EBO 188 Guidelines would be required as a result of the inclusion of any costs identified above?*
- d. What would be the criteria for the projects/communities that would be eligible for such exemptions? What, if any, other public interest factors should be included as part of this criteria? How are they to be determined?*

MoCreebec Eeyoud suggested an edit to the description of Issue #3 and proposed the addition of "First Nation" to the issue.

- **Should the OEB consider exemptions or changes to the EBO 188 guidelines for rural, ~~and remote~~ and First Nation community expansion projects?**

The OEB agrees with MoCreebec Eeyoud and will implement the suggested change.

Energy Probe referred to the Rolling Project Portfolio that utilities are required to update on a monthly basis as per the EBO 188 guidelines as an ongoing management tool for estimation of the future impacts of capital expenditures associated with distribution system expansion.

The Rolling Project Portfolio is an investment portfolio that represents the costs and revenues associated with all new distribution customers forecasted to be attached in a particular test year. EBO 188 determined that the Rolling Project Portfolio should achieve a Profitability Index greater than 1.0 to ensure that existing customers are not paying for a portfolio of distribution system expansion projects.



Energy Probe further noted that the economic tests for EBO 188 are derived from system expansion guidelines established in EBO 134. Accordingly, Energy Probe recommended that any review of the EBO 188 Guidelines should also encompass a review of EBO 134 as required.

A number of other parties including BOMA and LPMA suggested changes to the Issues List using a similar argument as Energy Probe.

The OEB agrees with the arguments of Energy Probe and others. However, the OEB notes that it is of the view that 3(b) encompasses EBO 134 but has determined that it will explicitly include EBO 134 in 3(c). With respect to the Rolling Project Portfolio, Issue 3(c) encompasses all the EBO 188 Guidelines including the Rolling Project Portfolio.

Energy Probe, LPMA, BOMA, OGA and CPA made specific suggestions with respect to the EBO 134 and 188 Guidelines, Profitability Index and Rolling Project Portfolio. The OEB believes that some of the proposed issues are too detailed and are already covered under the current draft Issues List.

NOACC suggested the addition of the following issues which would fall under expansion of Issue # 3.

- **Should there be exemptions to certain costs being included in the economic assessment for providing natural gas service to rural and remote communities? If so, what are those exemptions and how should they be considered by the Board in assessing to approve rural and remote expansion projects?**
- **Should the economic, environmental and public interest components in not expanding natural gas service to a specific rural and remote community be considered? If so how?**

The OEB accepts the issues as suggested by NOACC and will add them accordingly.

Issue # 4

*Should the OEB allow existing natural gas distributors to establish surcharges from customers of new communities to improve the feasibility of potential community expansion projects? If so, what approaches are appropriate and over what period of time?*

Energy Probe suggested a small change to the issue described above deleting the word “existing” to state: “Should the OEB allow natural gas distributors to establish surcharges from customers.... and over what period of time?” Energy Probe submitted that all natural gas distributors including new entrants should be allowed to establish

OEB approved surcharges from customers of new communities. The OEB agrees with Energy Probe and will incorporate the suggested change.

#### Issue # 5

*Are there other ratemaking or rate recovery approaches that the OEB should consider?*

The issue is sufficiently broad and there were no suggestions or significant comments on the issue from the parties.

#### Issue # 6

*Should the OEB allow for the recovery of the revenue requirement associated with community expansion costs in rates that are outside the OEB approved incentive ratemaking framework prior to the end of any incentive regulation plan term once the assets are used and useful?*

Energy Probe submitted that separating the community expansion projects and revenue requirement would be contrary to establishing just and reasonable rates (including by IRM). Accordingly, Energy Probe suggested the following change:

**Should the OEB allow for the recovery of the revenue requirement associated with community expansion costs in rates that are outside the OEB approved incentive ratemaking framework prior to the end of any incentive regulation plan term once the assets are used and useful? If so, how would this be done while ensuring just and reasonable rates?**

LPMA noted that if the OEB were to alter the Incentive Ratemaking framework settlement agreement with Union so as to allow community expansion costs in rates once the assets are used and useful, then there may be a need to change some other part of that agreement. Accordingly, LPMA suggested the following change:

**Should the OEB allow for the recovery of the revenue requirement associated with community expansion costs in rates that are outside the OEB approved incentive ratemaking framework prior to the end of any incentive regulation plan term once the assets are used and useful, and what other changes should be made to the approved incentive ratemaking framework?**

The OEB agrees with Energy Probe and LPMA but is of the opinion that the issue as currently worded captures the areas that they wish to explore. Energy Probe, LPMA or any other party are free to pursue this issue at the hearing and in submissions.

## Issue # 7

*Should the OEB consider imposing conditions or making other changes to Municipal Franchise Agreements and Certificates of Public Convenience and Necessity to reduce barriers to natural gas expansion?*

No comments or suggestions were received on this issue.

## Issue # 8

*What types of processes could be implemented to facilitate the introduction of new entrants to provide service to communities that do not have access to natural gas. What are the merits of these processes and what are the existing barriers to implementation? (e.g. Issuance of Request for Proposals to enter into franchise agreements)*

Energy Probe recommended the removal of examples from the above issue. The OEB believes that example clarify the issue and will not be removed.

**Proposed New Issues**

Parties recommended the addition of eighteen new issues, a majority of them dealing with the Ontario Government's recently announced cap and trade program. On February 24, 2016, the Ontario Government introduced new legislation on climate change. The initiative aims to reduce greenhouse gas emissions through a carbon pricing mechanism and encouraging the development and adoption of clean technologies. The OEB has determined that it will add two new issues with respect to the cap and trade program. These are:

- How will the Ontario Government's proposed cap and trade program impact an alternative framework that the Ontario Energy Board may establish to facilitate the provision of natural gas services in communities that do not currently have access?
- What is the impact of the Ontario Government's proposed cap and trade program on the estimated savings to switch from other alternative fuels to natural gas and the resulting impact on conversion rates?

The remaining suggestions with respect to cap and trade are either subsumed in the above two issues or delve far deeper into the issue than the OEB considers it necessary. The OEB reminds parties that it does not expect this proceeding to deal with the broader issues around cap and trade and the resulting rate impact of the program on all customers. Rather, the OEB is looking for directional impacts on how the cap and

trade program impact comparisons to alternative fuels and not a thorough quantitative analysis.

The Ontario Government has established a \$200 million Natural Gas Access Loan program to help communities partner with utilities to extend access to natural gas supplies. An additional \$30 million Natural Gas Economic Development Grant has been established to accelerate projects with clear economic development potential.

BOMA has submitted that the OEB could take these funds into account to determine the economic feasibility of community expansion projects. Accordingly, it has proposed the addition of the following issue:

- How should the OEB incorporate the Government's proposed loan and grant programs into its assessment of whether to approve proposed rural and remote community expansion projects? How should the Ontario Government's proposed loans and grants be incorporated into the economic feasibility analysis? Should this proceeding be postponed until the details of the Government programs are made available?

The OEB has determined that it will add this issue but with the following changes:

- How should the OEB incorporate the Ontario Government's recently announced loan and grant programs into the economic feasibility analysis?

Parties recommended the addition of other issues that the OEB believes are too specific or are not relevant to the hearing. LPMA raised an important point that dealt with defining a community. LPMA submitted that it is important to specify the definition of a community so that there is clarity on what kind of expansion projects would qualify under the framework that the OEB establishes. Union in its application (EB-2015-0179) defined a Community Expansion Project as an expansion project that would provide first time natural gas service to a minimum of 50 potential customers.

The OEB believes that a definition would assist it to determine which communities qualify under the new framework and will therefore add this question to the Issues List.

## 4 ORDER

### THE OEB ORDERS THAT:

1. The approved Issues List is attached as Schedule B to this Decision and Procedural Order No. 2.
2. Parties that wish to file evidence must file their evidence with the OEB and deliver it to all other parties on or before **March 21, 2016**.
3. Parties requiring additional information related to any filed evidence, and that is relevant to the hearing, shall request it by written interrogatories filed with the OEB and delivered to all other parties on or before **April 8, 2016**.
4. Responses to the interrogatories on the evidence shall be filed with the OEB and delivered to all other parties on or before **April 22, 2016**.
5. A Pre-Hearing Day will be held on **April 26, 2016** starting at 9:30 a.m. in the OEB's North Hearing Room at 2300 Yonge Street, Toronto, where the OEB will seek to develop a hearing plan and provide direction on their expectations for the oral hearing. The OEB will reserve a portion of the day for municipalities to briefly state their interests in this generic proceeding. Municipalities that are interested in addressing the OEB on the Pre-Hearing Day are required to communicate their intention to do so and provide time estimates to OEB staff by **March 31, 2016**.
6. An oral hearing will be held on the following dates (**May 5, 6, 9, 10 and 11, 2016**) starting at 9:30 a.m. in the OEB's North Hearing Room at 2300 Yonge Street, Toronto. To allow for an efficient use of the OEB's time, parties with aligned interests are expected to coordinate their respective cross-examinations.

All filings to the OEB must quote the file number, EB-2016-0004 and be made electronically in searchable / unrestricted PDF format through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Khalil Viraney at [Khalil.Viraney@ontarioenergyboard.ca](mailto:Khalil.Viraney@ontarioenergyboard.ca) and Board Counsel, Michael Millar at [Michael.Millar@ontarioenergyboard.ca](mailto:Michael.Millar@ontarioenergyboard.ca)

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**DATED** at Toronto, **March 9, 2016**

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

**SCHEDULE A**  
**LIST OF INTERVENORS**  
**DECISION AND PROCEDURAL ORDER NO. 2**  
**ONTARIO ENERGY BOARD**  
**EB-2016-0004**  
**MARCH 9, 2016**

**Ontario Energy Board  
EB-2016-0004**

**APPLICANT & LIST OF INTERVENORS**

March 09, 2016

**APPLICANT**

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**Ontario Energy Board  
EB-2016-0004**

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March 09, 2016

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**Ontario Energy Board  
EB-2016-0004**

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March 09, 2016

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**Ontario Energy Board  
EB-2016-0004**

**APPLICANT & LIST OF INTERVENORS**

March 09, 2016

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**Ontario Energy Board  
EB-2016-0004**

**APPLICANT & LIST OF INTERVENORS**

March 09, 2016

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**Ontario Energy Board  
EB-2016-0004**

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March 09, 2016

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**Ontario Energy Board  
EB-2016-0004**

**APPLICANT & LIST OF INTERVENORS**

March 09, 2016

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**Ontario Energy Board  
EB-2016-0004**

**APPLICANT & LIST OF INTERVENORS**

March 09, 2016

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**Ontario Energy Board  
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**APPLICANT & LIST OF INTERVENORS**

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**Ontario Energy Board  
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**APPLICANT & LIST OF INTERVENORS**

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**Ontario Energy Board  
EB-2016-0004**

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March 09, 2016

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**Ontario Energy Board  
EB-2016-0004**

**APPLICANT & LIST OF INTERVENORS**

March 09, 2016

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**Ontario Energy Board  
EB-2016-0004**

**APPLICANT & LIST OF INTERVENORS**

March 09, 2016

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**Ontario Energy Board  
EB-2016-0004**

**APPLICANT & LIST OF INTERVENORS**

March 09, 2016

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**Ontario Energy Board  
EB-2016-0004**

**APPLICANT & LIST OF INTERVENORS**

March 09, 2016

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**Ontario Energy Board  
EB-2016-0004**

**APPLICANT & LIST OF INTERVENORS**

March 09, 2016

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**Ontario Energy Board  
EB-2016-0004**

**APPLICANT & LIST OF INTERVENORS**

March 09, 2016

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**SCHEDULE B**  
**ISSUES LIST**  
**ONTARIO ENERGY BOARD**  
**EB-2016-0004**  
**MARCH 9, 2016**

## Issues List

### EB-2016-0004

1. What is considered a community in the context of this proceeding?
2. Does the OEB have the legal authority to establish a framework whereby the customers of one utility subsidize the expansion undertaken by another distributor into communities that do not have natural gas service?
3. Based on a premise that the OEB has the legal authority described in Issue #1, what are the merits of this approach? How should these contributions be treated for ratemaking purposes?
4. Should the OEB consider exemptions or changes to the EBO 188 guidelines for rural, remote and First Nation community expansion projects?
  - a) Should the OEB consider projects that have a portfolio profitability index (PI) less than 1.0 and individual projects within a portfolio that have a PI lower than 0.8?
  - b) What costs should be included in the economic assessment for providing natural gas service to communities and how are they to be determined and calculated.
  - c) What, if any, amendments to the EBO 188 and EBO 134 guidelines would be required as a result of the inclusion of any costs identified above?
  - d) What would be the criteria for the projects/communities that would be eligible for such exemptions? What, if any, other public interest factors should be included as part of this criteria? How are they to be determined?
  - e) Should there be exemptions to certain costs being included in the economic assessment for providing natural gas service to communities that are not served? If so, what are those exemptions and how should the OEB consider them in assessing to approve specific community expansion projects?

- f) Should the economic, environmental and public interest components in not expanding natural gas service to a specific community be considered? If so how?
5. Should the OEB allow natural gas distributors to establish surcharges from customers of new communities to improve the feasibility of potential community expansion projects? If so, what approaches are appropriate and over what period of time?
  6. Are there other ratemaking or rate recovery approaches that the OEB should consider?
  7. Should the OEB allow for the recovery of the revenue requirement associated with community expansion costs in rates that are outside the OEB approved incentive ratemaking framework prior to the end of any incentive regulation plan term once the assets are used and useful?
  8. Should the OEB consider imposing conditions or making other changes to Municipal Franchise Agreements and Certificates of Public Convenience and Necessity to reduce barriers to natural gas expansion?
  9. What types of processes could be implemented to facilitate the introduction of new entrants to provide service to communities that do not have access to natural gas. What are the merits of these processes and what are the existing barriers to implementation? (e.g. Issuance of Request for Proposals to enter into franchise agreements)
  10. How will the Ontario Government's proposed cap and trade program impact an alternative framework that the OEB may establish to facilitate the provision of natural gas services in communities that do not currently have access?
  11. What is the impact of the Ontario Government's proposed cap and trade program on the estimated savings to switch from other alternative fuels to natural gas and the resulting impact on conversion rates?
  12. How should the OEB incorporate the Ontario Government's recently announced loan and grant programs into the economic feasibility analysis?

