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BY EMAIL and RESS

December 13, 2011
Our File No: 20110242

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2011-0242/283 Enbridge and Union Renewable Natural Gas Application SEC Comments on Draft Issues List

Pursuant to Procedural Order #1 issued December 5th 2011, the School Energy Coalition (“SEC”) submits the following comments on the Draft Issue List.

It is submitted that the Board should include as express issues the following three general questions:

- a) Does the Board have the legal jurisdiction to approve the Applications?
- b) Is it appropriate for the Board from a policy point of view to consider activities by a regulated gas distributor that have as their primary purpose the development and potential subsidization of a new source of gas supply?
- c) If the Board has jurisdiction, and has determined that it is appropriate to consider this type of application, is the specific proposal in the Applications, overall, in the public interest?

With respect to the first two questions, it would appear to us that they would be best handled as threshold questions. With respect to the third question, it is proposed as a more general issue to complement the specific issues 2-4 on the Draft Issues List.

Our more detailed submissions are as follows:

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1. Threshold Considerations

SEC submits that there are two related threshold considerations that the Board may wish to resolve before deciding on the specifics of the Applications.

i) Legal Rationale

The Board should satisfy itself that there is a proper legal basis for it to approve a Renewable Natural Gas (“RNG”) program for which there are cost consequences to be included in rates. Specifically, it should satisfy itself that the Board has the authority under the *OEB Act* to consider the benefits (Ex. B/1/p.6-10) relied on in the Applications in determining if the costs to ratepayers are just and reasonable. This would be an expansion of draft issue 1.1, which inquires about the specific objective in the *OEB Act* applicable to the Applications.

ii) Policy Rationale

These Applications raise important and novel issues. Even if the Board finds that it has the legal authority referenced above, there may be policy reasons not to exercise that jurisdiction, independent of the specific proposals in the Applications.

While SEC will raise these questions with other parties during the Procedures Conference scheduled for December 16, 2011, we note that it might be appropriate for the Board to deal with these preliminary issues before dealing with substance of the Applications. If there is any question whether the Applications should be heard at all, in our submission that question should be resolved early in the process. This would avoid the Board and all parties expending unnecessary resources in a detailed examination of the Applications.

2. Overall Appropriateness

If the Board finds that there are legal and policy reasons for which some RNG program could be approved, SEC submits that a question as to the overall reasonableness of these specific Applications should be added to the issues list.

While each of the constituent parts of the proposed programs could be reasonable and appropriate (draft issues 2-4), the Board must be satisfied that the entire program itself is. In deciding if to approve the Application, the Board must be satisfied on its overall appropriateness especially with regards to the the proposed benefits that the Applicants cite will be created by its establishment. The Board will be required to determine if the costs of the program will yield sufficient benefits as to justify the rate consequences.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P.C.

Originally signed by

Mark Rubenstein

cc: Applicants and Intervenors (by email)