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August 8, 2017

Kirsten Walli, Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
Toronto ON M4P 1E4

VIA EMAIL

Dear Ms. Walli,

Re: EB-2016-0137 / EB-2016-0138 / EB- 2016-0139
Southern Bruce Gas Inc. Expansion Applications
Applications to serve the Municipality of Arran-Elderslie, the Municipality of Kincardine and the Township of Huron-Kinloss with natural gas distribution services
Letter from Vulnerable Energy Consumers Coalition (VECC) regarding hearing held on 2 August 2017

The Vulnerable Energy Consumers Coalition (VECC) is an intervenor in the above-referenced proceeding, and we have received a copy of the letter submitted by the School Energy Coalition (SEC) on 4 August 2017. VECC writes in support of the SEC's positions as set out in that letter, and would like to express similar concerns to the Board.

At the outset, VECC is concerned that this is not the first time that these applications have seen procedural irregularities that risk bordering on if not outright engaging breach of procedural fairness. For example, in response to Procedural Order No. 5, Board staff recommended restricting, vetting, or even banning intervenor and party interrogatories in a later stage of the proceeding. This suggestion rightfully met strong opposition from Union Gas as well as multiple intervenors.[1] As SEC noted in its submission of 27 April 2017,

> [This proceeding] is being undertaken in the context of a Board proceeding which requires procedural fairness, not just to the applicants, but also intervenors such as ratepayer groups like SEC, who are directly affected by the application. The Board should not twist its usual processes which are based on administrative law principles, to something very different, just because the proceeding has two applicants (as opposed to the usual one) competing for one set of approvals.

[1] See 27 April 2017 submissions of Union Gas (page 3), School Energy Coalition (pages 4-5), Greenfield Specialty Alcohols Inc. (page 3), Consumers Council of Canada (page 3), and VECC (pages 4-5).

Given the novel nature of this proceeding and the above submissions, there is already a heightened interest in and need for protecting procedural fairness, lest it fall between the cracks among efforts to hammer out other legitimate procedural and substantive issues in unfamiliar territory. This is why VECC notes with some alarm that the hearing held on 2 August 2017, which involved the applicants EPCOR and Union alone, appears to have again let procedural fairness fall to the wayside.

First, VECC again opposes any motion to either dispense with interrogatories or exclude intervenors from the interrogatory process, as EPCOR suggested in the hearing:

> We will accept as minimal and compressed a process as I think you're willing to give. We've been -- EPCOR has been at this for an awfully long time and to borrow the argument you just made, we are -- if regulation is a proxy for competition, it seems to me you've opted for this competitive process. And on that basis, we don't need the full-blown regulatory regime from the point at which you issue your next document to when a winning bidder is ultimately selected.[2]

If a utility being a repeat player is alone reason enough to eschew due process, then this would be reason to dispense with interrogatories or meaningful intervenor involvement in the vast majority of utility applications before the OEB, as many of those utilities likely have also "been at thiss for an awfully long time". This would, of course, be a harmful and absurd result, particularly where ratepayers and the public interest are concerned.

The competitive process that EPCOR refers to applies predominantly to deciding which applicant's proposal would best fulfill the Board's policy objectives in serving ratepayers, relative to the other. However, the competitive process alone, particularly when based on only one overall factor (i.e. revenue requirement), does not suffice for assessing the quality of the chosen proposal itself, independent of comparison to a competitor applicant.

The fact of the matter is that whichever utility succeeds in obtaining the right to the franchise, ratepayers will still be subject to a monopoly. With respect, two potential monopolies vying for a franchise does not equate to advocating for the public interest, and in our view it would be naïve to expect either to provide altruistic proposals for service. Intervenors must have full opportunity to test aspects of the chosen proposal in its own right and provide their submissions to the Board, just as would occur with any other standard utility application.

Second, Procedural Order No. 7 clearly delineated the intended narrow scope of the hearing:

> On July 20, 2017, OEB staff submitted a progress report which outlined the CIP parameters discussed in the joint session, areas of agreement and disagreement between proponents, draft permissible rate adjustment criteria and proposal comparison criteria. The proponents requested that the OEB allow for submissions on the areas of disagreement.
>
> The OEB grants this request and will hear oral submissions from both proponents. The submissions should address each of the areas of disagreement listed in OEB staff's progress report: upstream reinforcements, inflation costs, OM&A costing methodology, treatment of capital costs, other CIP parameters, and permissible rate adjustments. The OEB will also be taking this opportunity to ask questions of clarification on the CIP

[2] Tr. Vol. 1 (2 August 2017), at page 66.

> proposal from proponents. Proponents should be prepared to discuss next steps following the hearing of oral submissions.[3]

P.O. No. 7 limited the oral hearing to covering only issues directly concerning CIP parameters, in areas where the proponents disagreed, within those parameters. The Order also states that the OEB would only ask clarification questions regarding the CIP alone. Intervenors such as VECC and SEC[4] relied on such assertions in deciding whether or not to attend this hearing. Board staff also demonstrated this understanding in their opening remarks during the hearing.[5]

If there had been any indication that the hearing would stray beyond specific areas of disagreement within the narrow context of the CIP proposal, and especially into areas that directly concern the intervenors and on which they would normally have opportunity and cause to comment, then the Board should have provided for such opportunity. Based on the hearing transcript of 2 August 2017, it now appears that the hearing did in fact stray beyond the publicized narrow scope of issues as set out in P.O. No. 7, into areas where intervenors should have equal opportunity to provide further input.[6]

The fact alone that a hearing was held with only proponents in the room should have provided cause for all to remain particularly alive to the risk of breaching procedural fairness. This does not seem to have occurred. However, given that stages of this proceeding remain and the Board has yet to issue a decision on further process, VECC requests that the Board remedy the above procedural fairness deficiencies by ensuring it does not determine any issues at this stage that go beyond the narrow areas of proponent disagreement regarding the CIP parameters listed in P.O. No. 7, without first providing intervenors with opportunity to submit comments on those issues. VECC also reiterates its recommendation that the Board allow for intervenor interrogatories to test proposals in future stages of this process.

Best regards,

[*original signed*]

Cynthia Khoo
Counsel to VECC

CC Mark Rubenstein, SEC (via email)
Azalyn Manzano, OEB (via email)
Michael Millar, OEB (via email)
Parties and Intervenors (via email)

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3 Procedural Order No. 7, at page 2.

4 As stated in SEC Letter (4 August 2017), at page 1.

5 "And if I might just say quickly at the outset we are here to assist the Panel in any way we can today, although we do not plan to make any substantive submissions, as we understood Procedural Order Number 7 today is really to allow the two proponents to speak to the common infrastructure plan and answer any questions the Panel may have." Tr. Vol. 1 (2 August 2017), at page 2.

6 See SEC Letter (4 August 2017), at page 2.