

24 March 2009

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON
M4P 1E4

Dear Ms Walli:

Re: EB-2008-0346 process

We write on behalf of the Green Energy Coalition (GEC) to express concern with respect to the current Gas DSM assumptions review process.

Board Staff retained Navigant Consulting to assemble a draft list of measures and assumptions which was then circulated for comment to the LDCs and intervenors. Several intervenors cooperated by pooling part of the limited cost eligibility to retain Mr. Chris Neme of Vermont Energy Investment Inc. to review and comment on the Navigant report. In addition, the utilities have filed 280 pages of comment.

Unfortunately this process leaves the Board in the situation of having a great deal of untested information to consider and there are serious questions of fairness that have arisen.

In particular, the LDC reports now propose new measures and assumptions (indeed whole new programs), including assumptions based on internal 'confidential' reports that they have not shared with the intervenors. Contrary to Enbridge's assertions, it appears that the utilities had access to Navigant early in the process and could have tabled their proposals at that time but did not do so¹.

Further, Enbridge, as part of its submissions, has questioned Mr. Neme's expertise and impartiality. Enbridge repeatedly challenges the appropriateness of foreign expertise and asserts that Mr. Neme's participation on Evaluation and Audit Committees is somehow incompatible with his participation as an expert in this matter. In fact it has always been explicit in the EAC

¹ Navigant notes: *Navigant Consulting also met with DSM staff from each of Union and Enbridge to better understand the methodologies and calculations underlying their input assumptions and to explore the various data sources utilized including any relevant recent DSM evaluation reports and market research. Staff from both utilities were forthcoming with information regarding their assumptions. Most of the documentation provided by Union and Enbridge during or immediately subsequent to these meetings was either otherwise publicly available or provided on a "open-access" basis, but certain data and information considered to be either proprietary or confidential to one or both of these utilities was provided to Navigant Consulting on a confidential basis.*

appointment process that EAC membership is not on behalf of any one intervenor – rather it is to objectively ensure quality and transparency. Enbridge’s repeated comments on foreign expertise are particularly ironic given Mr. Neme’s extensive Ontario experience and given that it is Mr. Neme that has pointed in numerous instances to the Canadian consultant’s failure to recognize emerging Canadian regulations banning inefficient products in Ontario.

The process as it stands does not allow intervenors any formal mechanism to examine or challenge the utility proposals and assertions. Indeed, it leaves the utilities unable to challenge the substance of our comments (which may explain why Enbridge felt it necessary to attempt to impugn Mr. Neme’s credibility prior to seeing his report).

The process also suffered due to the limited costs eligibility that was insufficient (even with the pooling of hours) to allow our expert to address all aspects of Navigant’s report. It is notable that the utilities are provided with ratepayer funded budgets that were not similarly constrained and it is galling that Enbridge retained two sets of consultants, filed 190 pages of material and then celebrates the limited intervenor costs as a means to encourage efficiency in the process. Of course, there is no funding for an examination of, and reply to, the utility reports.

We are sympathetic to the Board’s desire to avoid spending hearing time on the minutiae of measures and assumptions and we welcome processes that can resolve these matters more economically. It is unfortunate that a process intended to streamline approvals and avoid acrimony has needlessly polarized the discussion. Accordingly, we ask the Board to consider refining the process to address these shortcomings.

We suggest that in this case and in subsequent years the EAC process be more fully utilized and in particular that Board Staff participate with the assistance of experts such as Navigant. Board Staff’s experts would be on hand during EAC discussions to inject dispassionate opinion after considering comments from both utility and intervenor appointed EAC members and advisors. In this way Board Staff will be more fully informed and be able to readily assist the Board should any matters be unresolved and require Board determination (presumably by way of a written process). For this approach to work it will be appropriate for the Board to ensure that intervenors have adequate funding. Alternatively, the Board could appoint Navigant or some other expert to act as an arbitrator in the EAC processes.

Both utilities are currently seeking EAC comment on 2009 proposed programs, measures and assumptions. If the Board were to indicate that it will not make a determination on the Navigant proposals until that process has run its course and Navigant has had an opportunity to participate with Board Staff and to revise its report in light of the EAC discussions (in the manner we suggest above), we believe there is an opportunity for these issues to be expeditiously resolved.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Poch', with a stylized flourish at the end.

David Poch

Cc: all parties