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BY EMAIL and RESS

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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 Written Submission on Process Issue

1. Pursuant to Procedural Order #2, these are the submissions of the School Energy Coalition ("SEC") with respect to the process issue.
2. **Overview.** SEC submits that the Board should undertake a two phased process in hearing these Renewable Natural Gas ("RNG") applications, bio-methane long-term supply contracts. While ultimately such an approach is not essential to adjudicate the application, it would be more efficient and cost effective for the Board to deal with some preliminary considerations first before delving into the specifics of price, cost-allocation, risk, and contract length.
3. It is important to recognize that these applications are novel. They ask the Board to approve 20-year natural gas supply contracts for bio-methane at above-market rates for the purpose of developing an industry that seemingly cannot sustain itself on its own, in return for various benefits that the Board has never before considered. These applications therefore raise some policy and legal concerns, which lends itself to a phased approach.
4. By way of a phased approach, the Board can review the preliminary considerations that are raised by these applications, and determine if it should proceed to hear them in a full

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hearing. If it does choose to proceed, at the very least the Board will have set the scope of what can and cannot be considered in a full hearing which would limit the disclosure and oral hearing length. The Board may also be able to provide guidance to the utilities on what information should be provided so it may properly determine the reasonableness and appropriateness of the application.

5. **Threshold Considerations:** The Board may wish to exercise its discretion not to approve these applications because they are *prima facie* not reasonable and appropriate. The Board should consider a number of questions in determining if these applications could ever be reasonable and appropriate. Is it just and reasonable for any subsidy Enbridge or Union pay to suppliers for the purpose of creating a viable bio-methane industry, be recovered from ratepayers? Is it the role of an economic regulator to create the conditions for an industry to be viable when it does not itself have direct jurisdiction over that new industry? Would it be more appropriate for such a program to be undertaken by the Ontario Government, much like it did with respect to renewable electricity generation by creating the Feed-in-Tariff (FIT) program under the *Green Energy and Green Economy Act, 1999*?
6. SEC submits that a discussion on the general reasonableness and appropriateness of these novel applications is warranted before significant costs are incurred by all parties. If ultimately these applications reasonably could be denied because of these and other preliminary concerns, it would be in the best interest of the Board and ratepayers (who ultimately will bear most of the cost) to deal with them separately.
7. **Evaluation Considerations:** There are inherent fundamental difficulties in measuring and evaluating the potential benefits against the costs of the proposed programs. There is no Board filing guidelines that set out what information must be included in an application of this type. There is also no Board policy or evaluation framework that sets out how the Board should go about considering the benefits of such a program as compared to the added cost that will be borne by ratepayers. Even if the Board determines that the applications *could be* reasonable and appropriate, it may wish to address these considerations through a policy consultation or provide guidance to the utilities on how to proceed. A phased proceeding would allow the Board to seek input from all parties on what information should be required (that would not be able to be provided by way of interrogatories) such as additional economic analysis undertaken and/or cost-benefit test created, so that the Board has the information and tools to best consider these applications.
8. It is also not sufficient for the Applicants Enbridge and Union to demonstrate to the Board that bio-methane is in the public interest, SEC agrees that it is, and probably so do most other parties. What they do have to demonstrate is that the benefits of bio-methane outweigh the cost consequences of essentially providing a subsidy to create a viable industry. Further, the benefits of bio-methane cannot simply be general benefits, but must be of the type that Board can consider under the *Ontario Energy Board Act, 1998 (OEB Act)*. While the Board has broad powers in setting just and reasonable rates pursuant to

section 36, it is necessarily limited to the objectives for gas under s. 2 of the *OEB Act*.¹ It is not clear to SEC at this time that all the specific benefits that Enbridge and Union outline in their application fall within the jurisdiction of the Board to consider.² For example, is it within the Board's jurisdiction to consider the benefit of support for the Ontario economy? By narrowing the scope of the benefits that can be considered, the Board has the ability to limit part of the disclosure process, and possibly expert evidence in advance.

9. **Conclusion:** While these considerations will eventually be dealt with during these applications; it is SEC's position that it would be more efficient and cost-effective to address general preliminary concerns first.

Yours very truly,
Jay Shepherd P.C.

Originally signed by

Mark Rubenstein

cc: Applicants and Intervenors (by email)

¹ *Advocacy Centre for Tenants-Ontario v. Ontario Energy Board*, 2008 CanLII 23487 (ON SCDC) at para 53.

² Enbridge and Union outline 7 overall benefits of RNG: a) Reduction in GHG Emissions, b) Consumer-Friendly Approach to Meeting GHG Reduction Targets. c) Waste Alleviation, d) Support for Ontario Economy, e) Flexibility, f) More Efficient Alternative to Electricity Generation, G) Conservation. (Common Evidence, EB-2011-0242/283 Ex B/1/p8-10)