

10 January 2012

Ontario Energy Board
2300 Yonge St., 27th Floor
Toronto, ON
M4P 1E4

Attn: Ms Kirsten Walli
Board Secretary

By electronic filing and e-mail

Dear Ms Walli:

**Re: EB-2011-0242 & 0283 Joint Enbridge and Union RNG Application
- GEC Submissions on the need for a phased hearing**

I act for GEC in this matter. As I am unable to attend the hearing of this procedural matter, I would ask that the following comments be brought to the Panel's attention.

GEC submits that there is no regulatory efficiency in a phased hearing if the initial phase would consider matters beyond pure legal jurisdiction, as in our view it would. From our review of the comments on the draft issues list that were provided by those intervenors suggesting a phased approach, it appears that the initial phase they seek would inevitably require a consideration of much of the factual evidence and likely a weighing of evidence.

The only *purely* jurisdictional issue that has been raised thus far (that would not require extensive consideration of the evidence) appears to be:

Does the Board have jurisdiction to approve system gas supply procurement at a price that includes recognition of an energy efficiency benefit?

GEC submits that the Board's jurisdiction is clear:

- Section 2.5 of the *Act* includes the objective of promoting energy efficiency consistent with government policy.
- The legislative intent for the inclusion of the objective must be to allow the Board to consider options that are not the least financial cost (narrowly defined). Otherwise the subsection would be redundant.
- Government policy as discussed at Exhibit B., Tab 1, pp. 19-20 favours such efficiency improvements.

- The pre-filed evidence on its face points to energy efficiency benefits from the promotion of RNG. Methane that would otherwise be lost to the atmosphere or used at much lower conversion efficiency to generate electricity would be used to displace non-renewable gas that is transported from far greater distances with corresponding mining losses and transmission energy costs.

Given that there is no pure jurisdictional barrier, the alternative purpose of a phased hearing, analogous to a motion to dismiss, would be to test in a first phase whether the applicants' evidence, taken at its highest, could possibly support an approval. This would, in our submission, require a fairly detailed consideration of factual evidence, a weighing of the rate impacts versus the potential environmental and energy security benefits, and lead to duplication if a second phase ensues. Such an approach would likely provoke needless debate about the appropriateness of evidence and the scope of considerations in the first phase.

The application and the questions proposed for a preliminary or first phase involve novel policy issues which we submit are best considered in light of a full elaboration of the facts.

For example, even if the Board were to find as a policy determination it is not appropriate to cause rates to rise to pay for the energy efficiency benefits of RNG, the fact that a 'premium' (as CME has sought to label it) above prevailing market prices for gas would be paid in the near term, would not in itself be determinative. This is so because there is a further factual question as to whether the encouragement of RNG will in fact raise gas customer commodity costs over time as it may avoid future greenhouse gas charges and may, as its price comes down, act as a check on conventional gas costs. Thus, RNG costs, like long term conventional gas contracts, may be considered reasonable in the maintenance of a portfolio of gas contracts as an insurance measure.

In summary, GEC submits that there is no simple jurisdictional issue and, while we acknowledge that there is an important policy issue raised by the proposal to pay a 'premium' in the near term for the attainment of energy efficiency, that question cannot be properly addressed without a significant portion of the evidence being tested, which militates against the consideration of the policy issue in a separate phase.

Sincerely,

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

David Poch
cc: all parties