



**BY EMAIL and RESS**

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April 3, 2018  
Our File: EB20170319

**Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

**Re: EB-2017-0319 – Enbridge RNG Enabling and Geothermal Energy Program – Issues List**

We are counsel to the School Energy Coalition (“SEC”). Pursuant to Procedural Order No.1, these are SEC’s comments on the Draft Issues List.

SEC requests the Board add the following two issues to the final Issues List:

- a. *Does the Board have the authority to set a service fee for the Geothermal Energy Service Program, and if so, under what section?*
- b. *What are the appropriate terms and conditions of the Geothermal Energy Service Program, RNG Enabling Program – Upgrading Service, and RNG Enabling Program – Injection Service?*

***Does the Board have the authority to set a service fee for the Geothermal Energy Service Program, and if so, under what section?***

SEC believes this additional issue is appropriate as it is not clear the Board has the authority to set a rate for the program, even if it believes the program has merit.

As part of its application, Enbridge is seeking approval pursuant to section 36 of the *Ontario Energy Board Act* (“*OEB Act*”) for a service fee for its proposed Geothermal Energy Service program.<sup>1</sup> The service fee is a rate.<sup>2</sup> Section 36 of the *OEB Act* requires an order of the Board for the setting of rates for the “transmission, distribution or storage of gas”.<sup>3</sup> The proposed Geothermal Energy Service Program would see Enbridge own and maintain geothermal loops, and charge customers for this service. As Enbridge’s evidence states, the “focus is on making geothermal systems more broadly available and implemented for customers who would otherwise be using natural gas or other fossil fuels for space or water heating”.<sup>4</sup> Its proposal is to deploy “geothermal systems where natural gas would otherwise be consumed”.<sup>5</sup>

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<sup>1</sup> Exhibit A, Tab 2, Schedule 1, p.1

<sup>2</sup> *Ontario Energy Board Act*, section 3

<sup>3</sup> *Ibid*, sections 36(1),(2)

<sup>4</sup> Exhibit B, Tab 1, Schedule 1, p.21

<sup>5</sup> Exhibit B, Tab 1, Schedule 1, p.25

The Geothermal Energy Service Program raises a question of the Board's jurisdiction to set a rate under section 36 for an activity that is not transmission, distribution or storage of gas. While Enbridge is framing the application as one of carbon abatement, the proposal goes much further in seeking approval for a rate for a service that is designed for customers who will not be natural gas customers. SEC submits it is appropriate for this unique legal issue of the Board's ability to approve the proposal warrants a separate issue on the Issues List. Additionally, if there is another section of the *OEB Act* which gives the Board authority, it would be helpful in the determination of the other issues already identified on the Draft Issues List.

***What are the appropriate terms and conditions of the Geothermal Energy Service Program, RNG Enabling Program – Upgrading Service, and RNG Enabling Program – Injection Service?***

If the Board does approve any of the three new proposed services, an issue that it will also need to consider is what are the appropriate terms and conditions. Enbridge has a detailed set of terms and conditions in its approved Handbook of Rates and Distribution Services and Conditions of Service. A relevant issue in this proceeding is if there will need to be changes to those general terms and conditions for these unique services.

The issue is especially important for the proposed Geothermal Energy Service Program. Enbridge's evidence states that the "[t]erms and conditions will be set out in the customer service agreements supporting this Program."<sup>6</sup> It has not provided such an agreement in its evidence. The Board should have oversight over the terms and conditions, including any customer service agreements, related to this new and fundamentally different proposed service.

Yours very truly,  
**Shepherd Rubenstein P.C.**

*Original signed by*

Mark Rubenstein

cc: Wayne McNally, SEC (by email)  
Applicant and Intervenors (by email)

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<sup>6</sup> Exhibit B, Tab 1, Schedule 1, p.28