

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sch.B, as amended;

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an order or orders approving the balances and the clearance of certain Demand Side Management Variance Accounts into rates, within the next available QRAM following the Board's approval.

FINAL ARGUMENT OF THE SCHOOL ENERGY COALITION

April 27, 2018

**SHEPHERD RUBENSTEIN
PROFESSIONAL CORPORATION**
2200 Yonge Street, Suite 1302
Toronto, Ontario M4S 2C6

Jay Shepherd

Tel: 416-483-3300
Fax: 416-483-3305
jay@shepherdrubenstein.com

Counsel for the School Energy Coalition

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1 GENERAL COMMENTS

1.1 Introduction

- 1.1.1** On December 19, 2017 the Applicant Enbridge Gas Distribution Inc. filed an Application to clear the balances in its three 2015 DSM deferral/variance accounts. Enbridge claims that it should be able to collect, from customers, a total of \$10,830,567¹, most of which is for the Demand Side Management Incentive Deferral Account (DSMIDA).
- 1.1.2** The balances in the DSMIDA and the LRAMVA for 2015 were the subject of a comprehensive audit by an independent audit firm, DNV/GL (the “EC”), supervised by the Evaluation Advisory Committee (EAC) of the Board. That firm certified in a report dated December 20, 2017 that the amount that should be paid by the customers for those two accounts (plus the DSMVA, which was not audited), was \$7,049,204². As a result, the claim by Enbridge is for recovery of \$3,781,363 more than the audited results for that year.
- 1.1.3** It appears to be common ground amongst the parties that there is only one material issue in this proceeding, the appropriate net-to-gross (NTG) factor to apply to the custom projects carried out by the Applicant in 2015³. The EC did a direct free ridership review of a statistically valid sample of 2015 custom projects by the Applicant, and produced measured results for the 2015 projects. A spillover amount was also added based on a generic figure, which it turns out was higher than the measured spillover for 2015. The Applicant instead proposes to use an assumed NTG⁴ that is significantly higher, based on a 2007/8 study of dissimilar projects from the years 2004-2006.
- 1.1.4** There was no oral hearing in this proceeding, with the result that the many allegations by the Applicant of what went on during the audit process have not been tested. There was written discovery, which provided additional information, but also added further unsubstantiated allegations by the Applicant.
- 1.1.5** The Applicant’s Argument-in-Chief was filed on April 20, 2018. This is the Final Argument of the School Energy Coalition.
- 1.1.6** Many of the customer groups who intervened in this proceeding have worked together

¹ AIC, p. 2.

² AIC, p. 3.

³ I.EGDI.STAFF.2 p. 3. See Enbridge Argument in Chief (EAIC) p. 4.

⁴ Union makes that clear: Union Argument in Chief (UAIC) p. 2. From Enbridge it is not as clear. See EAIC p. 3, but also I.EGDI.STAFF.2, p. 10, which appears to be seeking a Board order that the parties try to achieve a negotiated result..

throughout the hearing to avoid duplication, including exchanging drafts or partial drafts of their final arguments. We have been assisted in preparing this Final Argument by that co-operation amongst parties.

- 1.1.7* We did not in this proceeding have the benefit of seeing the final argument of OEB Staff, so we are unable to comment on OEB Staff positions on the issues.
- 1.1.8* SEC has not organized this Final Argument in accordance with the Issues List. Instead, we have grouped our submissions logically.
- 1.1.9* We note that this Final Argument is almost entirely identical to SEC's Final Argument in EB-2017-0323, the Union Gas 2015 DSM Clearances application. The differences are essentially where there are direct references to numbers claimed and audited, or similar utility-specific matters. The substantive submissions are the same⁵.

1.2 Procedural Conundrum

- 1.2.1* In PO #2 dated April 10, 2018, the Board made clear that this hearing is not intended to be a review of the pros and cons of the current audit process, and directed parties not to dwell on criticisms of the process in their Final Arguments. The Applicant and Union Gas have, in their Final Arguments, continued their unfair criticisms of OEB Staff, the EC, and the audit process generally under the guise of attacking the NTG results⁶.
- 1.2.2* SEC would have preferred to have an opportunity to cross-examine the Applicant's witnesses on those allegations in an oral hearing, and to have heard the evidence of the EC in response to those allegations. That having been said, SEC understands and agrees with the judgment of the Board to limit the scope of this proceeding to the direct matter at hand, the 2015 DSM D/V balances. Regulatory efficiency has to be respected.
- 1.2.3* However, SEC is then left with the difficulty that the Applicant has made many statements that it knows for a fact (because SEC Counsel Jay Shepherd is a member of the EAC) to be, at best, exaggerations, and at worst, simply incorrect. Those statements are just made quite boldly in the pre-filed evidence, and have no support. There is no opportunity to counter them, even though many of them are repeated as if factual in the Applicant's Final Argument.
- 1.2.4* Had there been a further evidentiary component, SEC assumes that the EC, and perhaps other EAC members, would have filed evidence showing that the Applicant's

⁵ We note that Union and Enbridge worked together on their applications [B.SEC.1], so the fact that the issues are essentially identical is not surprising.

⁶ Which Union, at least, admits: UAIC, p. 1,9.

statements were incomplete or inconsistent with what others in the room believe to have happened. Lacking that opportunity, but not wanting to see those incorrect statements go unchallenged, SEC has in various places in this Final Argument stated as a fact what it believes to have actually happened⁷.

- 1.2.5** This is, of course, not evidence, any more than the pre-filed evidence of the Applicant is proof of the facts it alleges. However, we have provided this to assist the Board on the same basis as the “pre-filed evidence” of the Applicant, i.e. unproven statements by a party about what they believe to be the facts.

1.3 Summary of Submissions

- 1.3.1** This section provides a brief summary of the positions taken and recommendations made by SEC in this Final Argument.
- 1.3.2 *Central Issue.*** The Applicant is asking the Board to give it credit for achieving savings that, as the evidence demonstrates, it did not actually achieve. The basis for this position is two incorrect statements. First, the Applicant says that the Board stipulated that actual NTG for 2015 custom projects should not be measured. Second, the Applicant says that the NTG study for 2015 was not carried out properly. Neither statement is correct.
- 1.3.3 *Measurement vs. Assumptions.*** The Applicant is confusing two quite different concepts: measurement and assumptions. Assumptions are predetermined values used to estimate the impact of programs when the results are not directly measured, such as prescriptive or quasi-prescriptive items. Measurement is the direct review of actual projects, usually using statistical sampling, to determine the actual results of those projects.
- 1.3.4** The results of custom projects are generally measured after-the-fact in an audit process called CPSV (custom project savings verification), which looks directly at a sample of projects to get a gross realization rate, which is then applied to all custom projects. For 2015, for the first time, that process included measuring the utility influence in those projects (the NTG figure), so that the auditor could provide an opinion on the actual, measured, net results, not just gross results.
- 1.3.5** The Applicant and Union Gas seek to apply, instead, assumptions to determine NTG, as if the NTG had not been measured directly. This is simply inappropriate. It was measured. Assumptions are no longer required.
- 1.3.6 *The Real Issue.*** Underlying this is that the EM&V process for the gas utilities has,

⁷ This covers only a few of the statements we believe should be clarified, as we have only referred to the ones that apply directly to the issues dealt with in this Final Argument.

until the current Framework, been managed by the utilities. Their complaints about the process today reflect their loss of control more than anything else, as opposed to actual flaws in the process.

- 1.3.7** SEC was one of the most vocal opponents of the change from the former collaborative process run by the utilities, to the new process led by OEB Staff. What we have found is that, as actually implemented by OEB Staff, the new process is every bit as collaborative as the old one, maybe more so, and has a materially higher level of independence and professionalism.
- 1.3.8 Result.** SEC submits that the Board should order clearance of the amounts the auditor concluded are correct, i.e. \$7,049,204.

2 MEASUREMENT VS. ASSUMPTIONS

2.1 The CPSV Process

- 2.1.1** The largest component of the savings claims for both Enbridge and Union are the results of custom projects, which include larger commercial, industrial, and multi-family residential. In those projects, while sometimes known and prescriptive equipment and techniques are used, for the most part the projects are specific to the particular plant, building, or enterprise of the customer.
- 2.1.2** Ontario has for many years audited the results of custom projects through the Custom Project Savings Verification process, known as CPSV. Initially under the supervision of the utilities, and now under the supervision of the auditor, trained engineers do a direct review of the project to ensure that it was implemented as claimed, and then check the savings calculations to make sure they are accurate and reasonable. Sometimes this takes place at the customer's site, and sometimes it is done by telephone (known as a TSER).
- 2.1.3** Rather than check all of the projects, as with any audit a sample is developed, designed to get statistically valid results that can be applied to the full census of projects. The sample is selected using strata, to make sure it doesn't erroneously rely on projects that are dissimilar to the norm. Much work has been done to ensure that samples are selected correctly, and the EC is a recognized expert in that area.
- 2.1.4** Once the sample is selected, and the sampled projects have been reviewed, the CPSV engineers reach a conclusion on the appropriate savings for each project reviewed. Those are aggregated into a gross realization rate, which is the percentage of claimed savings that the auditor thinks should be allowed. If the review shows that the actual gross savings for the sampled projects is 97.3%, then that percentage is applied to the gross savings claim of the utility for all custom projects to get the audited results (before NTG)⁸.
- 2.1.5** The central principle surrounding custom project verification is that the actual projects for the year are reviewed, and a determination is made on the gross savings that have actually been achieved. The savings are, in effect, measured directly. This does not use assumptions. It uses measurement.
- 2.1.6** This after-the-fact verification of custom project savings claims is widely used throughout North America. No-one complains that the results are applied

⁸ As with all of this, the actual process is more lengthy and complex than this description, but the above sets out what we believe to be a correct summary.

retroactively, because in fact they are not assumptions, but measurement⁹.

2.2 The Addition of NTG

- 2.2.1** Some jurisdictions, such as California, go a step further. Instead of limiting their after-the-fact verification of results to the gross savings, California and other jurisdictions also verify, usually through survey questions, the utility influence on those sampled projects¹⁰. This allows them to get to a net savings figure that is the measured net impact of utility custom projects.
- 2.2.2** Note that this is not about updating assumptions. This is about measuring what actually happened in the year being audited.
- 2.2.3** Assumptions are used, usually in prescriptive or quasi-prescriptive programs, to calculate the impact of the program, because the actual impact is not being measured. If the average efficient boiler saves 35,000 ccm over its lifetime, and 500 were installed due to utility programs, it is possible to estimate the total ccm for those boilers. It is not a measurement, because you don't know the sizes of all of the boilers, or whether they were replacing one that died, or a newer one, or any number of other factors. To avoid having to go out into the field and check, averages and assumptions are used. The TRM contains many of these assumptions.
- 2.2.4** Custom projects are not verified based on generic assumptions¹¹. When an engineer goes into a factory to assess the impact of, say, a higher efficiency grain drying system, the engineer looks at how the utility and the customer calculated the savings, and then applies his or her professional judgment to assess whether those savings are correct. The engineer determines what would have been installed in place of the efficient equipment, under standard industry practices; how long the old equipment would have lasted; what production forecasts are appropriate to determine future energy use; etc. While all forecasts are, of course, assumptions, they are in custom projects professional assessments based on the actual situation in which the efficiency measure is being installed. Whether the same equipment would on average have a higher or lower level of savings is not the issue. The issue is, what are the reasonable savings in this specific situation.
- 2.2.5** Thus, fundamental to the verification of custom project savings in Ontario has always been the principle that savings are measured, not assumed.

⁹ But the utilities do object when measurement of net results of these same projects is applied retroactively: EAIC p. 5, UAIC, p. 4.

¹⁰ I.EGDI.SEC.67 and other references.

¹¹ The suggestion that this is so in B.SEC.32 is not correct. Although some custom projects include prescriptive measures for which there are TRM assumptions, those assumptions are only used for a particular custom project where the information on the ground is consistent with them being true. Thus, the fundamental exercise is still measurement, not assumptions.

- 2.2.6 Unlike places like California, Ontario has not yet applied that same principle to measuring the net savings, but has only applied it to gross savings. As GEC has for years been proposing, using the measurement approach to determine the NTG is a better, more reliable methodology, and the only sticking point is cost.

2.3 **Replacing a Measured Value with an Assumed Value**

- 2.3.1 What the EC recommended for 2015, and OEB Staff accepted (after the EAC did not reach full agreement), was that since the already-contracted NTG Study was expected to look at 2015 projects anyway, and 2015 is the year being audited, it makes sense to apply the actual measured results for 2015¹².
- 2.3.2 That is what is now in the NTG Study that the Board has seen. The EC measured the net impact of the utilities' programs in 2015, using standard methods with statistical significance. The EAC supervised the process throughout. Nothing happened without discussion.
- 2.3.3 SEC submits that if the evidence shows that the utility program delivered X results, that should be the basis on which shareholder incentives are calculated. It is not reasonable, in our submission, to assume higher results when the Board already knows that those higher claimed results are not correct.

2.4 **"Moving the Goalposts"**

- 2.4.1 The utilities argue that this is changing the rules of the game, "moving the goalposts" as Enbridge calls it¹³.
- 2.4.2 With respect, this argument completely misses the point. The utilities had targets to reach. They didn't meet those targets, as demonstrated by direct measurement of their achieved results.
- 2.4.3 Should the utilities' targets be retroactively adjusted because they missed them? The utilities argue that their targets assumed certain NTG ratios, so if their actual program influence was lower than those assumptions, they should get the benefit of a retroactive adjustment. The principle proposed appears to be: if we missed our targets, lower our targets.
- 2.4.4 As GEC correctly points out in their Final Argument, for some programs the NTG assumptions are outside of the control of the utility. That is not, however, the case for

¹² This was not a unilateral decision of OEB Staff, as the utilities allege [I.EGDI.SEC.3]. It was much discussed, but the utilities did not agree, so there was not a 100% consensus at the EAC.

¹³ EAIC p. 8, 9.

custom projects. It is widely accepted¹⁴, including by the utilities¹⁵, that the utilities have a level of control over the free ridership that arises in their custom programs. They can go back again and again to customers that they already know will be doing efficiency projects, in effect acting as order-takers. Conversely, they can be proactive, looking for opportunities for customers to be more efficient where the customer doesn't see it, or doesn't have the expertise, or doesn't have the knowledge of the latest techniques.

- 2.4.5 It is not unusual that, when commercial industrial programs become mature, the free ridership level gets very high¹⁶, as the NTG study in this case shows. Customers become more sensitized to looking for savings. Efficiency is top of mind in many businesses. Utility intervention, even incentives, becomes less important for those customers, because the market is changing.
- 2.4.6 The answer to this is not to reduce the targets. The answer is for the utilities to identify where they can truly influence the decisions of customers, and focus on those areas. If a utility fails to do so, it will have higher free ridership. On the other hand, if the utility looks to maximize its impact on the market, free ridership will not increase.
- 2.4.7 The reason the Board allows utilities to spend customer dollars to seek efficiency, and incents those utilities when they succeed, is that the Board wants the utilities to have an impact. Otherwise, why spend the money?
- 2.4.8 In 2015, the Applicant has sufficient budget from the customers to deliver on its targets. It was unable to do so completely, despite spending that budget, and more. Part of the reason was insufficient focus on maximizing the utility's influence. The Board's response to that should not be to lower the targets, or to pretend the utility achieved more than they did.

¹⁴ E.g. by their own expert, Navigant: I.EGDI.SEC.76].

¹⁵ I.EGDI.SEC.31.

¹⁶ As noted by Navigant: I.EGDI.SEC.89, p. 4.

3 THE NTG STUDY

3.1 Background

- 3.1.1 It is useful to step back and look who is involved here. The senior person on the DNV/GL team that did the NTG work in the current audit is Mimi Goldberg. Whether or not she is the foremost expert in the world on this kind of analysis could be debated, but there is little doubt most experts in the field would rate her in the top five.
- 3.1.2 Also certainly included in that top five would be Dan Violette, formerly of Summit Blue and now with Navigant. Mr. Violette provided the Applicant's commentary on NTG best practices. He also was the lead author on the 2008 Summit Blue Free Ridership Study that the Applicant wants the Board to continue to apply¹⁷.
- 3.1.3 It would appear to be common ground amongst the parties that, between Ms. Goldberg and Mr. Violette, this NTG issue is being dealt with by some of the top experts in the field.
- 3.1.4 It is instructive in this regard to see what Mr. Violette says about the DNV/GL study. The Applicant implies that Navigant thinks the EC did a terrible job¹⁸. What Mr. Violette actually says is the following:

"[Question:] Please specify where in Navigant's report that Navigant states the NTG study completed by DNV did not leverage a best-practice approach and should therefore not be considered as a reasonable proxy for the influence of Enbridge's programs.

*[Response:]... The scope of work for the Navigant study referenced above did not however call for it to comment on the NTG study completed by DNV. Accordingly, the Navigant report included at Exhibit B, Tab 6, Schedule 1 does not contain such a statement on the NTG study completed by DNV."*¹⁹

And also:

*"For example, DNV made judgments in the scoring algorithm, such as the use of a 48 month cut-off. The Navigant team is not criticizing the DNV or any specific judgments. All research requires certain judgments."*²⁰

¹⁷ Although nowhere in Mr. Violette's evidence, including his interrogatory responses, does he propose that his out-of-date study should be used in preference to the current DNV/GL measurement of 2015 free ridership.

¹⁸ See EAIC, p. 10, 19.

¹⁹ I.EGDI.STAFF.20.

²⁰ I.EGDI.SEC.83.

- 3.1.5** The DNV/GL team carried out a standard self-report free-ridership survey on a statistical sample of 2015 custom projects for the Applicant and Union Gas. The EAC closely supervised the development of the survey instrument, the implementation of the survey, and the reporting of the results.
- 3.1.6** Spillover was more difficult, because it required a separate sample, survey and implementation process. Given the delays in the process²¹, the EC recommended using a spillover value from a recent study in another jurisdiction (Massachusetts) that looked at somewhat similar kinds of projects. The EAC discussed it at length, and could not agree on whether to complete the spillover study before releasing the NTG report, or to use the proxy value in the NTG report, and complete the spillover study later. The utilities insisted on further delay.
- 3.1.7** In the end, OEB Staff had to make the call to go ahead with the proxy value, 3.4% spillover.
- 3.1.8** The Spillover Study has since been completed, after some difficulty due to the very small number of customers that said they did non-incented projects that were indirectly influenced by their program participation in prior years. The final draft is being discussed by the EAC at a meeting on May 2nd. As we note below, the results of the study show that, with the exception of Enbridge Multi-Residential, all of the measured spillover values are much lower than the 3.4% proxy value used for 2015 NTG purposes.

3.2 **Critique**

- 3.2.1** The Applicant has offered a number of critiques of the NTG Study carried out by the EC.
- 3.2.2** **Board Requirements.** The Applicant quotes the Board as saying that, in the rollover year, the assumptions that will be used will be those from prior years. The implication is that the Board ordered that NTG not be measured for 2015.
- 3.2.3** There are two reasons why the Applicant's submission is incorrect.
- 3.2.4** First, as GEC correctly points out in their Final Argument, what the Board ordered is a rollover of the 2014 rules to 2015 as a transition year. Those 2014 rules included best available information, applied retrospectively if available before the conclusion of the audit.

²¹ Due to both the timing of the EB-2015-0029/49 decisions and resulting rate order process, and the challenges of transitioning to a new system.

- 3.2.5** What the Applicant appears to want is a selective rollover, in which 2014 rules favourable to the Applicant are rolled over, but if a new Framework rule is more favourable for 2015, then that should be applied. This is not appropriate.
- 3.2.6** Second, and perhaps more important, the Applicant seeks to categorize NTG as an assumption, like the engineering estimates for efficient equipment. While NTG can and often is an assumption, it can also be measured, which is what happened here²². As GEC correctly points out in their Final Argument, custom programs are particularly sensitive to utility program delivery, and therefore are particularly good candidates for direct measurement of NTG²³.
- 3.2.7** What the Applicant's argument boils down to is an assertion – which appears to be incorrect – that the Board said it did not want the 2015 (or 2016) NTG for custom projects to be measured accurately, and it would not consider accurate measurements if they were presented. Aside from being inconsistent with the Board's push for more accurate measurements of DSM results, it is not in fact what the Board said. The Applicant's tortured interpretation of how to apply the Board's words is not true to the sense of what the Board said, and should be discounted.
- 3.2.8** **Selection of Auditor/EC.** This is the most head-scratching allegation in the Applicant's argument. The Applicant complains that the selection of DNV/GL as EC was without their input and consent²⁴. Therefore, their conclusions in the NTG study should be ignored.
- 3.2.9** What in fact happened is that the TEC unanimously selected DNV/GL to do the NTG study. The Applicant and Union Gas were included in that consensus.
- 3.2.10** OEB Staff, in the interests of efficiency, selected DNV/GL to carry out the rest of the 2015 and 2016 audits, including the NTG component²⁵.
- 3.2.11** The Applicant has not objected to any of the work of DNV/GL on any aspect if the 2015 audit other than the NTG study, the only component of that audit in which the Applicant actively supported the selection of DNV/GL after a thorough review of all candidates (and much discussion).

²² It was, in fact, the EC that proposed this approach: B.SEC.24, Attachment A.

²³ Both utilities point to California on the issue of NTG retroactivity. The approach the EC recommended and carried out, under the EAC's supervision, is, in fact, the same as the method used in California for custom projects: direct measurement applied retrospectively. See the comments of Navigant in I.EGDE.SEC.67, as well as responses by both Enbridge in I.EGDI.STAFF.17 and Union in B.SEC.38. The implication in I.EGDI.STAFF.1 to the contrary appears to be unintentionally misleading.

²⁴ I.EGDI.SEC.4 and UAIC, p. 3, 9.

²⁵ And the utilities did not object, as Union Gas, at least, admits: B.SEC.16. It is only after the NTG results came in, and were worse than the utilities expected, that DNV/GL suddenly was such a poor choice.

- 3.2.12** Thus, the complaint of the Applicant on auditor selection is completely misplaced. On the one thing in which they disagree with the auditor, they actively supported their selection²⁶. They have nothing to complain about.
- 3.2.13 *Use of Self-Report Survey.*** The Applicant objects that the use of a self-report survey is subjective, and introduces bias into the result²⁷.
- 3.2.14** At the same time, the Applicant filed evidence from experts that self-report surveys are far and away the most accepted standard for development of NTG numbers. The response of the Applicant and its experts confirms that this was the appropriate approach for the 2015 Ontario study²⁸.
- 3.2.15** Based on the evidence of the Applicant (and also on the reality in the market), this objection is not valid.
- 3.2.16** SEC notes that, like the Applicant, we have no love of the self-report survey, which seems to us to be unnecessarily subjective. However, after years of objecting to this approach, we have reluctantly accepted the advice of numerous experts, including all of those involved in this proceeding. that, if we want to measure the influence of utility programs on customer decisions, self-report surveys are the best method currently known. We don't like it, but it appears to be the best we have.
- 3.2.17 *Sensitivity Analysis.*** The Applicant argues, quite correctly, that any self-report survey is particularly sensitive to the scoring algorithm used²⁹. Their expert agrees³⁰.
- 3.2.18** SEC also agrees. We further agree that, in the best of all possible worlds, there should be a detailed review of that scoring algorithm, including sensitivity analysis. While it adds substantial amounts to the cost, it is usually worth it to get more reliable information. On these things, we agree with GEC as well.
- 3.2.19** However, every study by the Board or a utility must also be subject to time and budget constraints. Sometimes you can't do everything you want. An i may be left un-dotted, and a t uncrossed, in the interests of saving time or money.
- 3.2.20** In the particular circumstances of this case, and recognizing that the EAC and OEB Staff were relying on a firm that had done hundreds of these studies in the past, it was a reasonable judgment to skip the sensitivity analysis step. You might not want to do that every time you review NTG, but in a situation in which there are already

²⁶ With respect to what's really happening here, please see Section 4 of this Final Argument.

²⁷ I.EGDI.SEC.37 and many other cites.

²⁸ I.EGDI.SEC.51, SEC.55, SEC.61. In fact, both experts agree.

²⁹ EAIC, p. 14.

³⁰ B/6/2, p. 3.

significant delays, and relatively high costs, there were efficiency goals that needed to be achieved.

3.2.21 As we note elsewhere, this complaint really boils down to reduced control of the process by the utilities, which we discuss in Section 4.

3.2.22 48 Month Cutoff. Related to the issue of sensitivity analysis is the decision of the EC to treat projects that would have gone ahead without the utility program, but up to four years later, differently from those that would have gone ahead later. The questions were around whether, if the project would have happened anyway (free ridership, in other words), the program advanced the date the project would have happened. If it advanced the date by less than four years, attribution was reduced. If it advanced it by more than that, the project got full credit.

3.2.23 The utilities object that this criterion was arbitrary³¹.

3.2.24 SEC agrees. However, we note that this cuts both ways. By way of example, if a utility program advanced a twenty-year project by five years, the utility gets 100% credit for all twenty years, even though in reality only the savings from the first five years arose because of the utility. On balance, the use of the cutoff favours the utility, but is a tradeoff given the increasing difficulty in forecasting future events that might have happened. That is why the EAC accepted the EC's proposal to use a four year cutoff³².

3.2.25 Delay. The delay in the 2015 process, most of which was not the result of problems with the new OM&V structure, had two impacts.

3.2.26 The easy one is spillover. As we note below, inclusion of measured spillover in the 2015 NTG results was a casualty of the delay in the process³³. The work has now been done, but it was more important to get the report filed than to get a relatively small number right.

3.2.27 The bigger concern is recall bias, noted in the expert reports³⁴. The longer you wait to ask a customer what influenced their efficiency decision, the less likely they are to get the real influences accurate³⁵.

³¹ I.EGDI.BOMA.4, p. 3, EAIC, p. 17, and elsewhere.

³² This issue is actually far more complicated than that, since it also brings into play whether the baseline (the counterfactual against which the efficiency measures are compared to calculate savings) should reflect the fact that the project would have occurred earlier than the end of the measure life. The NTG would then be higher, but the gross realization rate would be lower. Many EAC discussions revolved around how baseline, measure life, and attribution interact. The dividing line is not clear cut, but the method used by the EC in this case was appropriate.

³³ EAIC, p. 12; B.SEC.14.

³⁴ EAIC, p. 13, B/6/3, p. 20.

³⁵ We note that this is one of several biases, including acquiescence bias [I.EGDI.SEC.87], which usually goes the

- 3.2.28** There is no question that recall bias could be a problem in the 2015 study. However, it is important to understand clearly the choice the Applicant and Union Gas are presenting to the Board.
- 3.2.29** On the one hand, the Board could rely on a study by one of the foremost firms in the industry, and on which they are willing to give their opinion, that looks at the actual 2015 custom projects and measures the utility influence. The drawback is that it was probably done 12-18 months later than is optimal, due to factors outside of the EC's control.
- 3.2.30** On the other hand, the Board could rely on a ten year old study³⁶ by another top firm, which looked at very dissimilar projects delivered with a program that was not delivered in the same way. It was a study that used almost exactly the same methodology as the current study, despite implications from the utilities to the contrary³⁷. And, by the way, it also had a similar problem with recall bias³⁸, since the genesis of some of the projects studied was four years earlier.
- 3.2.31** SEC submits that the transitional delay in the process should not affect the Board's conclusion whether to accept the results from the auditor.
- 3.2.32** *Spillover.* The Applicant complains that the NTG study does not include measured spillover. This occurred because the report was already delayed, so the EAC was asked whether a proxy number could be used (from Massachusetts) for one year only. The utilities objected, but ultimately that is what the auditor used³⁹.
- 3.2.33** We now have the results of that study, although they haven't been confirmed finally by the EAC⁴⁰. The Enbridge results are as follows:

other way, and trade ally bias [I.EGDI.SEC.86], which also tends to go the other way. .

³⁶ UAIC, p. 1, which suggests that the prior number is from the 2014 audit, is unintentionally misleading. The Summit Blue study was done in 2008. In fact, it was so old that, when asked for the backup documentation on that study, Enbridge said that it was too long ago, and the people involved had retired: [I.EDGI.STAFF.2]

³⁷ I..EGDI.STAFF.8, p. 5, is misleading in that respect.

³⁸ I.EDGI.SEC.52, Attachment, p. 10.

³⁹ UAIC, p. 2, 6, B.SEC.9, and many other references from the utilities say that there was no SEC consultation on the use of the proxy spillover value. That is not correct. OEB Staff, without prior consultation, asked the EC to see if they could find a proxy value that might be useful, and could shorten the process of completing the NTG study, which the utilities were insisting had to include spillover. The EC found a number that seemed to be relevant, and the EAC discussed whether it should be used. See I.EGDI.SEC.7, p. 2.

⁴⁰ That discussion is scheduled for a meeting May 2, 2018. Initial results had very limited data (and showed very low spillover), so by consensus the EC was instructed to get more data, and was able to do so. The revised results were circulated on April 6, 2018, and the revised final report was provided to the EAC on April 23, 2018.

ENBRIDGE 2015 DSM CLEARANCES
EB-2017-0324
FINAL ARGUMENT
SCHOOL ENERGY COALITION

Custom Industrial	Etool Ventilation	14.90%	1.45%	16.35%	21.68%	1.10%	20.78%
	Heat Recovery	55.25%	1.45%	56.70%	28.59%	1.10%	27.64%
	Other	31.04%	1.45%	32.49%	16.79%	1.10%	16.75%
Custom Commercial	Etool Boiler and Boiler Add-on	24.09%	1.36%	25.45%	15.08%	1.52%	14.98%
	Etool Ventilation	4.93%	1.36%	6.29%	4.51%	1.52%	4.77%
	Steam Trap	27.42%	1.36%	28.78%	14.18%	1.52%	12.50%
	Other	18.22%	1.36%	19.58%	17.97%	1.52%	16.99%
Custom Multi-Residential	Etool Boiler	26.18%	8.24%	34.42%	16.98%	6.35%	17.46%
	Etool Ventilation	19.70%	8.24%	27.94%	21.22%	6.35%	21.89%
	Other	97.10%	8.24%	105.34%	4.23%	6.35%	7.57%

With the following for Run it Right.

Domain	Ratios			+/- at 90% Confidence		
	2015 Attr	SO	NTG	2015 Attr	SO	NTG
RunitRight	50.06%	0.00%	50.06%	19.63%	0.00%	19.23%

The Union results are:

Sector	Domain	Ratios			+/- at 90% Confidence		
		2015 Attr	SO	NTG	2015 Attr	SO	NTG
Custom Industrial	Greenhouse	40.40%	0.89%	41.29%	26.50%	0.56%	25.89%
	Heat Recovery	59.14%	0.89%	60.03%	15.21%	0.56%	14.99%
	Leak Repair and Hydronic Insulation	39.71%	0.89%	40.60%	17.45%	0.56%	17.26%
	Operational Improvements	10.15%	0.89%	11.04%	14.35%	0.56%	13.55%
	Controls	18.21%	0.89%	19.10%	7.92%	0.56%	7.75%
	Steam Trap	28.74%	0.89%	29.63%	19.44%	0.56%	18.76%
	Other	20.57%	0.89%	21.46%	18.47%	0.56%	18.22%
Custom Commercial and Multi-Family	Controls	78.05%	0.00%	78.05%	39.03%	0.00%	33.82%
	Other	38.02%	0.00%	38.02%	30.75%	0.00%	30.06%

With the following for Large Volume:

Domain	Ratios			+/- at 90% Confidence		
	2015 Attr	SO	NTG	2015 Attr	SO	NTG
Greenhouse	5.67%	0.82%	6.49%	12.33%	1.12%	11.56%
Heat Recovery	12.55%	0.82%	13.37%	12.03%	1.12%	11.61%
Leak Repair and Hydronic Insulation	6.59%	0.82%	7.41%	8.82%	1.12%	8.60%
Operational Improvements	20.65%	0.82%	21.47%	16.63%	1.12%	16.01%
Controls	0.08%	0.82%	0.90%	0.20%	1.12%	1.32%
Steam Trap	9.31%	0.82%	10.13%	11.30%	1.12%	10.91%

3.2.34 The proxy value was 3.4%. As a result, the overall clearance amounts for both utilities would be reduced if the measured results for 2015 were used. For Enbridge, most spillover would be at 1.45% and 1.39%, with some at 8.24% and some at 0.0%. The result for Union Gas is worse.

3.2.35 SEC agrees that it is appropriate to adjust the audited amounts to use the measured spillover. However, given the status of this current proceeding, we believe that it would be better to apply these results to 2016 rather than 2015.

3.2.36 We note that the Applicant proposes to use zero spillover⁴¹, which would be even worse still for them.

3.2.37 **Secondary Attribution.** Finally, the Applicant objects that the NTG study was supposed to include Secondary Attribution, and it did not⁴².

3.2.38 Secondary Attribution is the influence of the utility's program activities in prior years on customer decisions this year. For example, if a utility convinced a customer ten years ago to implement a steam leak repair protocol, secondary attribution would say that steam leak repairs this year – and forever – would be credited to the utility for shareholder incentive purposes. This would occur even if, in the years in which the actual influence took place, the utility (spending customer dollars, of course) had achieved the maximum allowable incentive for the year. This year they would still get more for that past work.

3.2.39 We note that secondary attribution does not include influence with a long sales cycle, such as when a utility works with a customer for a couple of years to get approval for a project that is finally implemented this year⁴³. Secondary attribution, by contrast, is work done in past years that, as a collateral result of the success of that early work,

⁴¹ I.EGDI.STAFF.2, p. 4.

⁴² EAIC, p. 10; UAIC, p. 6.

⁴³ SEC notes that, although SEC opposes secondary attribution, SEC initially identified the long sales cycle issue at the TEC, and proposed that it be included in current year attribution (NTG). See I.EGDI.STAFF.8, p. 3.

results in projects in the current year that were not directly influenced by the utility. In effect, the utilities in seeking secondary attribution want to receive incentives, not just for the projects they influence immediately, but also every time that customer does a similar project in the future.

3.2.40 The Applicant's position on this is wrong on two counts.

3.2.41 First, the Applicant argues that the TEC agreed by consensus to include Secondary Attribution in the NTG study⁴⁴. This is not correct.

3.2.42 As is evident from the documents filed⁴⁵, this issue was hotly debated at the TEC, and no consensus was reached. The advice of DNV/GL was that including secondary attribution would cause delay and customer fatigue, and was not recommended⁴⁶, noting in a memo to the TEC:

"The surveys can be designed to capture either type of NTG, but we do not recommend attempting to capture both the current program and cumulative program versions of attribution and spillover at once; this would result in longer, more confusing surveys for customers."

3.2.43 After much TEC discussion, it was accepted that the Board would ultimately have to decide whether incentives should be paid for secondary attribution, and that would happen in some form of contested proceeding. To assist the Board in that determination, the compromise survey design decision was that the NTG survey would include questions sufficient to get some indication of the magnitude of secondary attribution (through a question or series of questions in the survey at a less rigorous level of precision, insufficient for DNV/GL to form a professional opinion). The study would then have information that would allow the Board to determine whether secondary attribution should be considered.

3.2.44 At no time did the TEC or the EAC conclude that the NTG results for any year, whether 2015 or otherwise, should include secondary attribution. Any suggestion to that effect by the utilities in their pre-filed evidence or their arguments is incorrect⁴⁷.

3.2.45 Second, the Applicant's position that they should get current credit for influences they generated ten years ago, aside from having substantial recall bias, is inconsistent with how the Board has approved programs, and built targets and incentives. The Board has never considered incentives that include clipping coupons for work done in the

⁴⁴ EAIC, p. 11 and elsewhere.

⁴⁵ See I.EGDI.STAFF.5, Attachment 1, p. 4-7.

⁴⁶ Ibid, p. 4.

⁴⁷ The suggestion by Enbridge in I.EGDI.SEC.34 that they were surprised by the lack of inclusion of Secondary Attribution, is not credible. Given the history, anyone knowledgeable in what had transpired could not have been surprised.

distant past.

3.2.46 What the Applicant now appears to be saying is that, if they can't deliver on their targeted program results through their efforts this year, they should be able to bootstrap their incentives through annuities based on their past – previously incented – activities⁴⁸.

3.2.47 We note that this is even more egregious a position to take because, as the utilities freely admit⁴⁹, their targets don't even include any results arising out of secondary attribution.

3.2.48 Even if adding in secondary attribution were an appropriate result (which SEC strongly disputes), it is certainly not something that should be implemented after the fact.

3.3 SEC Conclusion

3.3.1 SEC agrees with GEC that, while the NTG study for 2015 was not perfect, it was still very good. It is sufficient that the Board should rely on its findings.

3.3.2 The auditor, based on longstanding and extensive experience in NTG studies, has reached a conclusion on the appropriate net achievement of the Applicant in 2015. SEC submits that the Board should, in this situation, accept the auditor's findings.

⁴⁸ In the case of Enbridge, it would increase the amount of the incentive by more than \$900,000: I.EGDI.BOMA.3, p. 2.

⁴⁹ B.SEC.26.

4 LOSS OF CONTROL OF THE PROCESS

4.1 The Former EM&V Process

- 4.1.1** Prior to the current (2015-2020) Framework, the EM&V process for gas DSM was managed by the two utilities⁵⁰ in a collaborative process that had evolved over time.
- 4.1.2** Initially, each of the two utilities had an audit committee made of up utility representatives, plus two or three representatives selected by the intervenors interested in DSM. Over time, the practice was that the three representatives would be one from environmental groups, one from residential customers, and one from non-residential customers, although that was not followed slavishly.
- 4.1.3** The early audit committees had limited visibility as to the activities of the auditor, who clearly worked for the utility. The utility selected the auditor, for example. The audit committee was not involved in that process. The utility had many meetings with the auditor not in the presence of the committee, and provided instructions at various levels of specificity. For example, it was the utilities that, without the knowledge of audit committees, developed a list of measure lives and told the auditors to use them.
- 4.1.4** This system evolved. For example, by no later than 2009 the utilities were providing their live TRC spreadsheet to one of the intervenor representatives who had expertise in the field, so that they could review the cost-effectiveness calculations, the incentives, and the LRAM results.
- 4.1.5** By the 2008 Framework, the intervenors reached agreement with the utilities for an increased role for the audit committee. Subsequently, during that Framework, the idea of an independent audit opinion was proposed and agreed. The intervenor representatives continued to get more information, and have more input into the process, but some aspects, and particularly the CPSV process, continued to be done with little audit committee input⁵¹.
- 4.1.6** Throughout the period up until 2012, the utilities continued to do their own EM&V research, separate from the annual audits. While there were often informal consultations, that work (such as the Summit Blue Free Ridership Study in 2008) was clearly utility product.
- 4.1.7** In the 2012-2014 Framework, the parties agreed to terms of reference for the audit committees that, while still looking for consensus, allowed the non-utility reps to have the final say in the selection of the auditor. There was also more visibility in the

⁵⁰ I.EDGI.BOMA.9..

⁵¹ See, for example, I.EDGI.SEC.16, Attachment, p. 2.

CPSV process, although it still took place under the close control of the utilities rather than the audit committees. During that same period, the audit committee members finally got full access to the live calculations⁵².

4.1.8 That Framework also saw the formation of the Technical Evaluation Committee (TEC) to oversee general EM&V work, including a Technical Reference Manual (TRM). This was a joint committee, with multiple attendees from each utility, plus three intervenor representatives, and two independent experts.

4.1.9 By the time the 2015-2020 Framework was decided, two things had happened.

4.1.10 First, the problems with the utility-led CPSV process had erupted into contested proceedings, something the collaborative approach was supposed to avoid. Examples are EB-2013-0352 and EB-2013-0019, both of which included NTG as a major issue.

4.1.11 Second, the TEC had bogged down into bureaucracy and red tape, and insufficient progress was being made on major work bundles⁵³. While much good work was done, too much time was being spent on procedural items, and not enough on substance. The focus on minutes, and terms of reference, and reports, and codes of conduct, etc., although of course necessary, ended up being out of proportion to the value of the items that really mattered.

4.2 **The 2015 Process**

4.2.1 The 2015-2020 Framework stipulated that the entire EM&V process would be managed by OEB Staff⁵⁴. The audit committees were gone, as was the TEC, and in their place was a combined advisory body, the EAC. The EAC had a similar composition to the TEC, but added OEB Staff in a co-ordinating role⁵⁵. The most important feature, though, was the appointment of an Evaluation Contractor, an expert firm that would carry out audits, supervise other experts, and work under the direction of OEB Staff to ensure that gas DSM EM&V was done properly.

4.2.2 SEC and other intervenors opposed the move from the collaborative process run by the utilities to a new process run by OEB Staff. Our concern was that, after finally achieving more transparency (and independence) within the existing collaborative process, those hard-fought gains might be lost in a new process, in effect leaving intervenors starting from scratch. We were also concerned that OEB Staff would be

⁵² B.SEC.29.

⁵³ See I.EGDI.STAFF.5, p. 2.

⁵⁴ UAIC, p.3. We note that, in the Union Gas argument, the suggestion is made that only the utilities and OEB Staff will collaborate, which of course is completely inconsistent with the model the Board was adopting (which had many perspectives at the table in the EAC).

⁵⁵ This term, “co-ordinating”, has been the focus of much of the complaints from the utilities about claimed overreaching by OEB Staff.

challenged to have sufficient resources to handle the utilities' push for outcomes favourable to their bottom line. There was the potential, as SEC and others saw it, that the new process would be more an ongoing negotiation between OEB Staff and the utilities, where the utilities would have far more resources and where the customers' input would be less important.

- 4.2.3** Conversely, the utilities were generally accepting of the new process, and in their submissions on the 2015-2020 Framework did not express opposition to it.
- 4.2.4** As with most things, what happens in the real world is what matters. As implemented by OEB Staff, the process made listening to everyone's input the primary focus of the activity. Nothing happened without a discussion, and consensus was always sought⁵⁶. When consensus was not achieved, OEB Staff made the call on how to move forward⁵⁷, but in no case did they do so without first listening to all points of view on the issues (usually at great length, particularly if the utilities did not agree)⁵⁸.
- 4.2.5** The implication⁵⁹ that OEB Staff was off on some frolic of their own, controlling the process and making arbitrary decisions, is just not factually correct. On some issues they didn't end up agreeing with the perspectives communicated by the utilities. That is not failure to listen⁶⁰. That is failure to acquiesce, which is simply not the same thing⁶¹.
- 4.2.6** The process benefited from the selection by OEB Staff of DNV/GL as the Evaluation Contractor. This had two advantages. First, DNV/GL was the contractor selected by consensus by the TEC to do the NTG Study, so OEB Staff knew the firm was acceptable to all parties. Second, DNV/GL is known to be one of the foremost EM&V firms in North America, so it should have been a relatively low risk choice.
- 4.2.7** Although it is true that OEB Staff made the decision to select DNV/GL, largely in the interests of timing, it is also true that this selection was discussed at the EAC, and none of the members of the EAC objected to the selection. While future ECs and other experts retained for this process will be selected with prior advice from the EAC, this choice, driven by the exigencies of the transition from one system to another, was

⁵⁶ I.EDGI.SEC.1 and B.SEC.2 are simply wrong in this respect. See, for example, I.EDGI.SEC.7, SEC.16, SEC.33, STAFF.11, and BOMA.10, among other references. There should be no dispute that the EAC operates using a principle of full, meaningful discussion.

⁵⁷ Although in their June 2017 memo Enbridge did not agree with OEB Staff making such a call [I.EDGI.SEC.26, Attachment], they now appear to agree that OEB Staff has to have a residual ability to move the process forward: I.EDGI.SEC.13.

⁵⁸ The implication in I.EDGI.SEC.13 that "the Chair dominates" is not factually correct. In fact, as the EAC actually unfolded, it couldn't be further from the truth.

⁵⁹ EAIC, p. 20.

⁶⁰ See EAIC p. 14-16, I.EDGI.STAFF.11, and many other places.

⁶¹ Enbridge now calls it "inexperience" [I.EDGI.SEC.11] but that appears to be a euphemism for "they didn't do what we wanted them to do".

the correct one to make. There are no legitimate complaints here.

- 4.2.8** Interestingly, one favourable result of the selection of EC was that they have, from the outset, seen themselves as fully independent from the utilities. In the past, experts retained by the utilities had to, in the end, satisfy the utilities in order to get paid. They were under contract to the utilities, even when they regularly reported what they were doing to the TEC, or to an audit committee.
- 4.2.9** That is not the case with the EC today. The new structure appears to have freed them up to exercise their professionalism fully. They report to OEB Staff, but they understand that they have multiple stakeholders and experts to whom they must answer, almost like a Board of Directors. This has given them more ability, it would appear, to provide the value of their expertise.
- 4.2.10** SEC does not suggest for a minute that the current process is perfect. There have been obvious missteps, and the process has suffered from what can charitably be described as birthing pains.
- 4.2.11** A good example is the practice followed by OEB Staff of reviewing expert work product of all types before it was seen by the EAC, including providing comments and input that was not seen by, or even known to, the EAC members. When this came to light, it was not the utilities that objected (despite their objections now), but non-utility members of the EAC. A second mistake was then made when OEB Staff – which could have handled the problem quickly and easily with transparency – instead doubled down and said they would not disclose their input to the experts, and would continue to do it. This was an error.
- 4.2.12** This has since been changed, and OEB Staff no longer massages the work of the experts before the EAC sees that work.
- 4.2.13** Similarly, a very volatile and sometimes opaque scheduling protocol⁶² has now been fixed, with scheduling known well in advance and adjusted immediately when things happen faster or slower than planned. The 2016 process is, in that respect, much better than the transitional year in 2015.

4.3 SEC Conclusion

- 4.3.1** There are still improvements that could be made, of course, but at the root of this is a process in which the utilities are no longer in control of what happens. They have a seat at the table, and their voices are heard. They are able to put substantial resources into trying to influence the EM&V process. They can and do have ten people attend EAC meetings, eager to help direct the results.

⁶² See I.EGDI.SEC.22.

- 4.3.2** The complaints by the utilities in both of their applications are, at their root, about losing control of the process. It is human nature. They are fighting for every dollar of incentive and other funds. Control of the process allows them to direct the results more actively. The new process leaves them in a strong position to influence the results, but without their prior level of control.
- 4.3.3** This is an appropriate result. The audit of their results, and the expert work setting the parameters for those audits (like generic EM&V studies) should be independent of those being audited. In a financial audit, the process is managed by an independent audit committee of the Board of Directors, which provides input to the auditors. Management has ample opportunity for input to the auditors, but the auditors ultimately make the decisions based on their expert judgment.
- 4.3.4** This situation is really no different.
- 4.3.5** SEC believes that, if the Board can continue to maintain a fully collaborative and transparent process, while at the same time making it more independent, all stakeholders will benefit.
- 4.3.6** SEC also believes that the complaints from the utilities, while understandable given the changes that have occurred, should be seen for what they are: attempts to re-assert their control and achieve a more dominant role in the assessment of their own results.

5 AMOUNTS TO BE CLEARED

5.1 Audited Results

5.1.1 The EC, in a thorough process, has provided its opinion that the amounts to be recovered by the Applicant from its customers in respect of its 2015 DSM activities are the following:

Deferral/Variance Account	Enbridge Pre-Audit Claim	Auditor's Opinion
Shareholder Incentive (DSMIDA)	\$10,318,594	\$6,207,339
Lost Revenue (LRAMVA)	\$28,800	\$16,405
Spending (DSMVA)	\$825,460	\$825,460 (not reviewed)

5.1.2 SEC does not believe that, in every case, the Board should simply accept the conclusions of the auditors. Ultimately, the responsibility for ordering the collection of money from customers lies with the Board, not the auditor. In addition, the auditors are not always right. Sometimes the evidence demonstrates that the auditor has made mistakes, or adopted incorrect approaches or assumptions. This has happened in the past, and the Board has had to step in.

5.1.3 That is not the case here. The auditor did a good job on this audit, in fairly trying circumstances, and produced results in which the Board can have confidence. The auditor selected was previously selected for the NTG work by the TEC, was selected by OEB Staff with the knowledge of the EAC for the audit work, and is one of the foremost audit firms in North America, particularly when it comes to NTG. A thorough oversight process kept close tabs on the work.

5.2 SEC Recommendation

5.2.1 SEC therefore submits that the Board should order recovery from ratepayers of the amounts determined by the auditor to be correct.

6 OTHER MATTERS

6.1 Costs

- 6.1.1** The School Energy Coalition hereby requests that the Board order payment of our reasonably incurred costs in connection with our participation in this proceeding. It is submitted that the School Energy Coalition has participated responsibly in all aspects of the process, in a manner designed to assist the Board as efficiently as possible.

All of which is respectfully submitted.

Jay Shepherd
Counsel for the School Energy Coalition