BY EMAIL and RESS

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Our File No. EB-2017-0306/7

Ontario Energy Board
2300 Yonge Street
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Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2017-0306/307 – Enbridge/Union MAADs/Ratesetting

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #5, this letter sets out SEC's initial positions with respect to the questions posed by the Board.

We note that it is contrary to our normal practice, and based on the regulatory philosophy of our client, generally not a constructive approach to the regulatory process, to establish positions on most issues before hearing all of the evidence.

It is our experience that even after extensive discovery, including a technical conference, the evidence in an oral hearing can change our view of the appropriate resolution of issues, so an open mind is strongly preferred. This is also what our clients expect of us in every proceeding. Where a proceeding has an ADR, that additional understanding often comes about through an open dialogue with the Applicant. The reason why so many proceedings end up being settled is that both Applicant and customer groups learn from that dialogue and find common ground.

In a contested proceeding, the equivalent is the back and forth of an oral hearing, where the original evidence is tested and there are virtually always surprises.

However, to be of maximum assistance to the Board in managing the proceeding, SEC provides the following responses:

1. **Do you plan on supporting approval of the merger?**

   For all practical purposes SEC believes that the merger is a *fait accompli*, since the two amalgamating companies are already part of the same corporate group, under common management. One of the issues to be addressed more fully in the oral hearing is the extent to which the operational benefits of the merger will arise independent of the amalgamation itself, something that has already been explored briefly at the Technical Conference.

   SEC has not identified evidence in this proceeding that would lead the Board to deny approval to amalgamate. The more difficult issue is that the Applicants have indicated they will only amalgamate if they are happy with the Board's decision on the rate plan. This is an approach to the regulatory process that should, in our view, concern the Board.

2. **If you plan to support the merger what, if any, conditions of approval will you propose?**

   It is not possible at this point to identify the conditions of approval that would be appropriate. This will depend largely on the rate plan that is approved by the Board, if any. For example, if the Board requires a rebasing in 2019 or 2020, the nature of any conditions of approval will change dramatically. After SEC hears the oral evidence, and understands the input of other parties, it will develop proposed conditions for its final argument that will, in most cases, be dependent on other aspects of the Board's decision.

3. **Do you support the 10-year deferred rebasing period?**

   This question disaggregates into two components. First, the Applicants seek to have the Board's electricity MAADs rate-setting policy applied to these two gas distributors. SEC believes the rationale for that policy does not apply here, and it would not be good regulatory practice to do so. This issue is not likely to be affected by the evidence in the oral hearing.

   The second component is whether a ten year IRM plan for the combined entity is a good idea, and that will depend very much on the terms of that IRM plan. There is nothing inherently evil about a ten year IRM. As an example, a ten year rate freeze, with limited ability to seek additional price increases, and tight control over pass-throughs, might make sense if it is implemented in the context of a comprehensive ten year Distribution System Plan. That plan would have to face the issue of stranded assets and increasing carbon prices head on, but assuming it did one can imagine that a reasonable plan could be developed. At the other extreme, the proposed plan, which contemplates rate increases well above inflation and essentially no sharing of the operational benefits of the merger, and little control over increased stranding of assets, is in SEC's view contrary to the public interest.

4. **Are there elements of the proposed rate setting framework that you oppose?**

   Yes, but identifying those elements is dependent on what is in and what is out. All components of the proposal are interdependent, and it is not realistic to deal with them individually. For example, certain types of ICMs could make sense, depending on how rates are otherwise designed, and the level and type of discipline being applied to capital spending. It is not possible to be more specific until we hear the oral evidence.

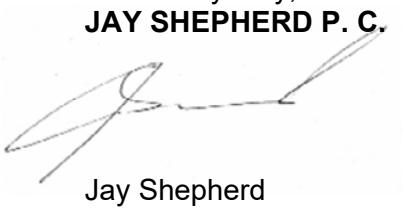
5. **Are there elements missing from the proposed rate setting framework?**

   Yes. See our comments under #3 and #4 above.

SEC understands that these responses may be less definitive than the Board expected. However, we hope these descriptions of our positions at this point in the process, with significant evidence left to be heard, are helpful to the Board.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.



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cc: Wayne McNally, SEC (email)
Interested Parties