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January 23, 2019

BY EMAIL AND RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700, P.O. Box 2319
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

Re: EB-2017-0224/EB-2017-0255 – 2018 Cap-and-Trade Compliance Plans – GEC Costs

We write in response to Enbridge's letter of January 17th which raises concerns with GEC's cost claim in this matter.

Enbridge argues that the evidence of Mr. Chris Neme filed by GEC and co-sponsored by ED did not respect the Board's directions on scope and therefore our cost claim should be reduced. The company also notes that the time we claim is much higher than that claimed by other parties.

As to the companies' position on our compliance with the Board's directions on scope, it is based on a misleading and oversimplified view of the facts:

Indeed, prior to the oral hearing the companies' resistance to the proposed filing of intervenor evidence resulted in a preliminary process wherein the Board vetted an outline of Mr. Neme's proposed evidence, which outline indicated that Mr. Neme would:

> 1. Provide a technical assessment of the utilities' evidence regarding an alleged lack of available incremental abatement, *including a quantification of the incremental abatement that pre-existing reports and data suggest is available* (if any). (emphasis added)
>
> 2. Estimate the potential cost savings (if any) that the utilities could have achieved for consumers by including incremental customer abatement in their 2018 cap and trade plans.
>
> 3. As part of these assessments discuss whether the utilities' comparison of incremental abatement with other options has been on an 'apples to apples' basis.

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4. As part of these assessments discuss the potential (if any) to decrease overall compliance portfolio risk for consumers by including incremental abatement.

It is striking that Enbridge's letter of objection to our costs omits the portion of the Board's Ruling on the proposed evidence which includes the following statement:

> Having considered the various correspondence on this issue from ED, GEC, Enbridge Gas and Union Gas, the OEB finds that the proposed evidence is relevant and the budget is acceptable.

As Mr. Neme's written and oral evidence and the GEC argument make clear, the companies turned a blind eye to the Board's actual direction on how to assemble and evaluate C&T compliance plans and misapplied the MACC. The Board's guidance for Cap and Trade plans made clear that the MACC was "an input" (albeit a principal one) that the utilities should consider in developing their plans[1]. In addition, the Board said it "will want to see information from the Utilities that demonstrates that they have undertaken a detailed analysis which supports their choice of compliance options…"[2]

Mr. Neme's evidence and GEC's case fell squarely within these parameters. The bulk of the evidence and hearing addressed:

- the extent to which the companies misused the MACC to limit analysis of the cost-effective conservation potential rather than for its intended purpose as a comparative cost, benchmarking tool;
- how the companies misapplied the MACC, by treating it as gross rather than net savings, and then further discounted the results, thereby double counting free riders;
- the extent to which the companies limited their approach to the MACC curve generated by the 'business as usual' CPS and ignored the alternative CPS scenarios, thereby largely ignoring the Board's direction requiring "detailed analysis".

In regard to the latter point, Mr. Neme limited his observations to "a quantification of the incremental abatement that pre-existing reports and data suggest is available". In doing so, he respected the outline of our proposed evidence that the Board found relevant. Enbridge nevertheless argues that because Mr. Neme referenced the CPS analyses, he deviated from the Board's preference for a UCT rather than TRC based analysis. However, Mr. Neme specifically addressed this in his evidence noting:

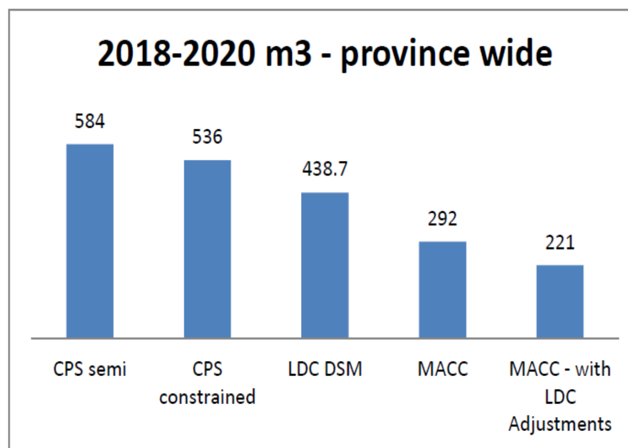
> Q: Have you assessed the cost-effectiveness of incremental efficiency from the UCT cost effectiveness perspective?
> A: I have performed a high-level assessment of the cost-effectiveness of incremental efficiency from the UCT cost-effectiveness perspective.[3]

[1] Ontario Energy Board, "Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities", Report of the Board, EB-2015-0363, September 26, 2016, p. 20.
[2] Ibid, p. 22.
[3] Ex. L., p.30

And in his consideration of the CPS:

> It should be emphasized that those savings are all cost-effective under the "TRC Plus" cost-effectiveness test. Generally speaking, the TRC Plus test is more constraining than the Utility Cost Test (UCT) that the Board appears to be supporting for use in carbon cap and trade planning and that the utilities have used to assess and support other abatement initiatives such as renewable gas. Indeed, Enbridge's own analysis of its 2015 DSM portfolio results concluded that its TRC Plus benefit-cost ratio was 2.95 while its UCT benefit-cost ratio was 4.47. … Put simply, the CPS estimates of the additional cost-effective potential that the utilities could acquire is very conservative relative to the additional potential that would be considered cost-effective under the cost-effectiveness framework applicable to this proceeding.[4]

We noted in argument that the disparity between the low MACC results and the levels in the CPS and the utilities own DSM plans should have raised alarm for the companies as the disparity would have been hard to ignore:



However, the utilities scrupulously avoided informing themselves about the CPS and MACC methodologies and limitations. To add insult to injury the companies then deviate from the MACC to discount DSM further by double counting free riders and by ignoring the MACC curve result for RNG. It was entirely appropriate for Mr. Neme's evidence to address these shortcomings and disparities in the utility analyses.

Incredibly, Enbridge states "Mr. Neme's intentional ignorance of the MACC was confirmed through his oral testimony." In fact, the reference the Enbridge provides reads as follows:

> MS. SEERS: And so in other words, obvious, but you did not include in this section of your report your own analysis, using the marginal abatement cost curve; right?

[4] Ex. L, p. 25

MR. NEME: I'm not sure what you are asking. I did definitely do an analysis to better understand what the MACC encompassed. I did look at the numbers in the MACC. In fact, I believe in parts of my testimony I offered corrections to the utilities' comparisons of their own savings levels to the MACC, so I did analyze the MACC, if that's your question.

As can be seen, Mr. Neme was anything but ignorant of the MACC. The cross cited is about what Mr. Neme considered as an alternative indication of potential *after finding the flaws in the companies' application of the MACC.* The allegation by the utilities is particularly galling given the evidence that the utilities were the party that failed to understand the details behind the MACC in regard to both its intended purpose and its treatment of free riders.

The objection to our cost claim treats the companies' position on how to interpret and apply the Conservation Potential Study and the MACC as a given. This being the first opportunity for a public hearing review of the use of the CPS and MACC, it is remarkable that the utilities would suggest that there was no room for debate about application. The Board's proceeding was suspended due to the government's decision to curtail C&T, and we do not have the benefit of the Boards consideration of our respective positions. In these circumstances it is entirely inappropriate to argue for a punitive costs determination based on the companies' prediction of how the Board would have ruled on the issues.

Indeed, for the companies to now argue that we should not have prosecuted a case demonstrating their willful blindness and their inconsistent application of the MACC as between supply and conservation options is to argue both that the Board's pre-approval of the GEC evidence outline is to be ignored and that the Board's hearing process should be a rubber stamp, and a head in the sand affair.

Had the companies believed that our evidence was beyond our pre-approved outline or otherwise out of scope they had every opportunity to object to its introduction, or to any aspect of the oral hearing that they felt exceeded the scope. No such objection was made or ruling obtained. Indeed, it should be noted that during the course of the oral hearing the Panel did not limit the hearing into the critique we raised of the company efforts, suggesting that the Panel found a fleshing out of these issues to be of assistance. And we note that Board Staff relied upon Mr. Neme's analysis for many of the points they submitted in final argument.

With respect to the companies' comment on the extent of our cost claim compared to other participants, we note that their argument simply ignores two factors:

First and foremost, the fact that, unlike other intervenors, we offered written and oral evidence and played a lead role in the proceedings. As the analysis of time spent we provided which compares Mr. Neme's hours to the budget that the Board pre-approved demonstrates, these costs are in conformity with that pre-approval[5].

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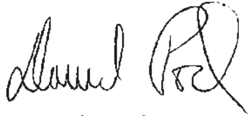
[5] Memorandum of Chris Neme, Aug. 25th, included in our cost claim materials

Second, a portion of the time in question related to a prolonged effort, *with the companies' involvement and assent*, to try to focus and narrow the issues in dispute with the utilities. Those discussions were included as preparation for the oral hearing as it was hoped that they would shorten the time required for an oral hearing. Had the companies not appreciated that effort at the time it was open for them to curtail it. Those discussions were consistent with the Board's direction in the Practice Direction on Costs that the parties cooperate and participate responsibly in the process. We submit that it is in the Board's and the public interest to encourage such efforts at cooperation intended to streamline the regulatory process.

Respectfully,



David Poch
Cc: all parties