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Our File No. 20180243

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

Dear Ms. Walli:

Re: EB-2018-0300/301 – Enbridge Gas Inc. – 2016 DSM Clearances

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #1 in these two matters, these are SEC's submissions on the two applications.

Because the issues are fundamentally identical in the two applications, and the two Applicants have merged and are now one utility, SEC has combined its submissions and is filing a single final argument to cover both proceedings.

SEC will provide submissions on four issues raised in the Applicants' evidence:

1. The proposal to adjust the custom targets
2. Two changes affecting the DSMVA
3. Shifting of large amounts of budget from one program to another
4. Persistent complaints about the EM&V process.

Custom Targets

The issue is whether the targets the Board ordered for 2016 custom projects should be adjusted retroactively to reflect the 2015 NTG study. The effect would be to reduce the 2016 targets substantially, in effect allowing the Applicants to earn incentives on poorer performance than the Board originally established. The Applicants use a tortured reading of the EB-2015-0029/49 Decision of the Board to argue that the Board has already determined this.

Fairness Issue. It is first important to set the context. For the 2015 audit, the Evaluation Contractor actually measured the net-to-gross achieved for the 2015 custom projects. What that analysis showed is that the level of utility influence on customers participating in its custom projects was much less than had been assumed by the utilities, the Board, and most stakeholders for some years. As customers had suggested in previous Board proceedings might be the case[1], the level of free ridership in custom projects was substantial, and the level of spillover was small.

The impact of the true calculations on the Applicants' achievement was sufficient that the combined shareholder incentive claim, $18.3 million ($10.3 million for Enbridge and $8.0 million for Union), would have been reduced to $13.2 million ($6.2 plus $7.0 million respectively).

The Applicants argued that 2015 was a transition year, and new NTG results should not be applied to it. The Board agreed, and the Applicants received more than $4 million of incentives, paid for by customers, for performance they did not actually achieve.

The Applicants now propose another "technicality", in order to create the result that their much lower influence on customers in custom projects doesn't impact their incentives in subsequent years, either. The 2015 results, which normally would then apply to adjust results in 2016, for example, should, say the Applicants, also adjust their targets for 2016.

That offsetting calculation would mean that the Applicants would never pay any price for their failure to perform on custom projects. In the first year, 2015, they can pretend they had more influence on customers than they really did. In the next year, Applicants are allowed to retroactively reduce their targets to allow them to be achievable despite that limited influence[2].

It is never in the utilities' interests to improve their NTG results, because they will be incented the same regardless of their level of influence over their customers.

This argument by the Applicants implies two things that SEC believes are not correct:

1. NTG is an external factor, not within the utilities' control.

2. When the Board established targets for the utilities in EB-2015-0029/49, those targets were not influenced by the budgets the Board set for the same programs and the same years.

[1] E.g. EB-2013-0109.

[2] In subsequent years, the Board's target formula would establish targets based on prior year actual results.

NTG as a Performance Issue. The first implication is that, like engineering assumptions, NTG is part of the calculation of the technical impact of the installed measures. It is, by this thinking, not part of the utility's performance in delivering their programs.

This is simply wrong.

To use a simple example, assume a widget saves 1000 lifetime cubic meters of gas, based on its technical efficiency and useful life, and on what it is replacing. If a new study shows that a widget actually saves 1200 lifetime cubic meters of gas, that is an external assumption not within the utility's control. It is about the widget, not about the utility. Targets and results should both be set based on that improved information.

The utility's act of convincing the customer to install that widget is utility performance, and is the basis of the shareholder incentive. If a study shows that the utility did not in fact convince that customer to install the widget, then the utility's performance is lower, and the shareholder incentive should also be lower. That influence analysis – free ridership, in this case – is not external to the utility. It is about whether the utility did the thing – influence the customer to save gas – that it is being compensated to do.

Connection Between Budgets and Targets. The second implication is that the Board would have approved the same budgets for each of the utilities' programs, even if the approved targets were significantly lower for some or all of them. If the budget for large customers for Enbridge in 2016 was $7 million (for example[3]), and the target was 665 million lifetime cubic meters (as it was), the utilities imply that Board would have set the same budget of $7 million if the target was 312 million lifetime cubic meters (as "adjusted" by Enbridge).

This is, of course, not a credible position. Budgets and targets are not set by the Board independently, nor should they be, a principle that all parties, and the Board, have accepted for many years. What the Applicants are proposing is that Enbridge, for example, should get the same $7 million to achieve less than half the results, because it turns out that their influence over the efficiency decisions of their large customers is less than they thought.

They forget, perhaps, that they are spending the customers' money. The customers (and the Board on their behalf) want to know what they are getting for their money. It is not reasonable to assume that the customers will be indifferent to the utility targeting less than half the results that were planned, and thinking that's just fine and dandy.[4]

Interpretation of the Board's Decisions. The Applicants take the position that the Board's past decisions require adjustment of the 2016 targets. This argument only works if the Board accepts that when the Board said "prescriptive" in 2015-0029/49, it really meant to say

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[3] It is not expressly segregated in the EB-2015-0029/49 case, but that is probably the right range.

[4] If a salesperson is given a budget to achieve certain results, and incentives if they do so, that salesperson cannot come back after the fact and say that it is harder to achieve those results than they thought. Well, actually, they can, and perhaps the budget has already been spent, but they certainly won't receive the incentives they were promised. If you don't deliver performance, you don't get paid for it.

"prescriptive and custom". Of course, this is not what the Board said, and the Applicants' argument fails on this point alone.

In this respect, SEC agrees with OEB Staff. 2015 was a transition year, with targets set on a transitional basis. The Board set fixed targets for 2016, refusing to accept the utility proposals and instead adopting its own conclusions on what was reasonable. There were no adjustment factors. For 2017 and beyond, the Board established a formula for setting targets.

The Applicants argue that the Board's comments with respect to prescriptive programs – that changes in assumptions and NTG should adjust the targets – should be applied to custom programs. Custom programs are quite different from prescriptive programs, and there is no reason to think that the Board's comments that relate specifically to prescriptive should be expanded retroactively to include custom.

Conclusion. The dollars involved in the "adjusted targets" issue for 2016 are relatively small. However, they reflect a principle that SEC believes the Board should affirm, and affirm strongly. Once the Applicants have a target, and a budget to achieve it, their shareholder performance incentive will be based on achieving that target, not a target retroactively adjusted to reflect the challenges the utility faced in achieving the original target[5].

DSMVA

There are two issues relating to the DSMVA. First, as requested by the Board the Applicants are proposing a new wording for the Enbridge DSMVA. Second, the Applicants are asking for permission to reduce the 2016 DSMVA refund to customers by $2.8 million, which they propose to "roll over" and spend in 2017 and 2018.

DSMVA Accounting Order Wording. Enbridge took the position that certain of their programs are multi-year in nature, and in those programs (commercial and residential Savings by Design and Low Income New Construction[6]) commitments are made in one year for payments in a subsequent year. In the DSM Mid-Term Review, the Board in its Report[7] directed Enbridge, for the former EGD franchise area, to amend the wording of its DSMVA accounting order to track the commitments on those programs, subject to re-adjustment if the amounts were not actually paid out as committed.

The proposed wording has been filed, and in C.SEC.EGD.10, Enbridge has provided a markup that shows the changes to the existing accounting order.

There are at least three clear problems with what Enbridge has proposed.

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[5] SEC notes that we do not agree with the Board's determination that targets for 2017 and onwards should be reduced due to poor performance in prior years. However, the Board has made that decision, and the issue is now one for the next framework, rather than today. Just as the utilities should not be seeking after the fact changes to the targets, neither should SEC.
[6] EB-2015-0049, Exhibit B/1/6, p. 3ff. EB-2017-0128, EGD Final Submissions, p. 47ff.
[7] EB-2017-0127/8, Report of the Board, p. 22.

First, the Board was clear in the Mid-Term Review that it was not willing to treat those commitments as a cost incurred by Enbridge when committed. For that reason, the Board refused to order the creation of a new deferral account for that purpose.

Enbridge has sought to do the same thing as the Board refused. That is, the amount that is committed is treated as spent in the year of commitment, and thus reduces any amount refunded to customers (or increases the amount collected from customers) through the DSMVA.

The other approach, which appears to be what the Board intended, is to track the commitment in a sub-account of the DSMVA. If in a subsequent year Enbridge has to make a payment on account of that commitment, that would be recovered from customers through the DSMVA, over and above the normal variances in the year. On the other hand, if Enbridge does not have to pay all or some of the committed amount, then it is never collected from customers.

The Enbridge proposal says a committed amount is collected from customers when committed, then refunded only when all possible need to pay out on the commitment has expired. What the Board intended, SEC believes, is that the commitment is tracked as an available future amount in the DSMVA, but is not collected from customers at that time. It is only collected from customers when Enbridge has to pay the money out.

Second, the Board was clear that commitments that are realized and spent within the 2015-2020 period are not covered by this provision. The budget for 2015-2020 has already been set, said the Board, and commitments and payments within that period are self-adjusting. It is only where commitments are made within that period, and paid outside of that period, that the protection of DSMVA tracking is required.

The Enbridge proposed wording ignores this clear direction entirely. There is no explanation for this omission in the materials filed by the Applicants.

Third, Enbridge requested special treatment for certain named programs that are designed with incentive commitments in one year that are paid out in a subsequent year. The Enbridge wording appears to include all forecasts of future incentive payments as a result of current year DSM activities. For example, if an industrial customer says in 2017 that they will install an efficient widget in 2018, under Enbridge's proposal the incentive for that widget can be booked in 2017, even though it is paid in 2018. This possibility was not mentioned in the DSM Mid-Term Review, and is inconsistent with the original idea that programs with several steps (like Savings by Design) include express commitments by both the customer and the utility with respect to future years.

SEC believes that Enbridge is seeking to get approval for something broader than the approval rejected in the Mid-Term Review. In our submission, the Board should require Enbridge, during the DRO phase of this proceeding, to provide a new accounting order that is limited to the multi-year programs in issue, applies only to commitments that would involve payouts outside of the 2015-2020 period, and collects money from customers only when it is paid out by Enbridge.

Rollover of IT Spending. Enbridge underspent their allowed budget in 2016 due to delays in their new DSM IT system. Instead of refunding that underspending to the customers through the mechanism of the DSMVA, as the EB-2015-0029/49 decision and the current Framework require, Enbridge wants to keep that money to spend in subsequent years.

On the face of it, this seems logical. The only change is in the timing of the spending. They are still spending the customers' money on the same project, just a couple of years later.

What this masks is the financial impact of their proposal to Enbridge and to the customers. At the margin, the proposal allows Enbridge to collect an additional $2.8 million from customers.

In 2016, Enbridge proposes to collect $2.8 million more from customers than they spent, by reducing the refund from the DSMVA by that amount. What happens in 2017 and 2018 if spending (other than this IT project) is at 115% of the allowed budget? It would appear the answer is that Enbridge can collect 15% extra from customers each year through the DSMVA, plus the additional $2.8 million. The net effect is to get around the DSMVA limit on spending.

It appears to SEC that the solution to this is to refund the full underspend in 2016, as the Framework requires, and then allow Enbridge to recover the overspend in 2017 and 2018 as long as they are within the DSMVA caps. In some scenarios, the result will be the same. At the margin, however, the result will be different, and it is for that reason that the approved DSMVA rules should be applied properly.

Enbridge will argue in reply that this is just spending money on the approved purpose, but at a different time, and they should not lose the budget amount because of delay. SEC notes that this would apply to all aspects of the budget, then. In effect, on this theory a five year plan would have a five year budget, and only money unspent at the end of the five years would have to be returned to customers through the DSMVA. Enbridge could shift money to later years at any time, in their discretion, yet still collect it from the customers in rates as originally planned.

Indeed, in the past the Applicants have argued for this flexibility, but as yet the Board has not ordered it. It should not be granted to them here through the back door. If that kind of spending flexibility between years is sought, it should be as part of the next Framework, not as a retroactive adjustment to the current rules.

Budget Reallocations

Like others, perhaps, SEC was surprised by the aggressive shifting of budgets by the Applicants in 2016. Variances from approved budget to actual had a range of up to +/- 80%[8]. This is far beyond the budget freedom that the Board has given the Applicants in its past DSM decisions.

SEC notes that in the DSM Mid-Term Review the former Union Gas requested additional flexibility to reallocate budgets, but the Board rejected that request[9]. Despite this, in 2016 both Applicants appear to have been very free in their reallocation of budgets. Basically, they reallocated within scorecards subject to the limits in the EB-2015-0029/49 Decision, and then anything above that they felt they could reallocate via the DSMVA, collecting more on some programs and less on others through that mechanism.

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[8] C.STAFF.EGD.2 and C.SEC.Union.39.

[9] P. 24.

The overall effect of this appears to be that the utilities can treat their overall budget as a kind of envelope, within which they can spend on anything they want. This does not appear to us to be consistent with the Board's intent. Spending large additional amounts on residential, and starving the programs for commercial/industrial, for example, appears to be inconsistent with the Board's overall DSM principles.

We could parse the Board's past words, as we are sure the Applicants will do in reply, but that really misses the point. There are two questions here:

1. Did the Board intend the utilities to have essentially unlimited budget flexibility?
2. If not, what options are available to the Board after the fact?

We believe that the answer to the first question is no, and as a result the utilities have spend their budgets without adhering to the Board's requirements with respect to those budgets.

The second question is more difficult. If an Applicant spent 80% more on a program than the Board approved, and 80% less on another program to fund that shift, the Board really has two options.

It can allow the reallocation retroactively, despite it being contrary to a prior Board order. That raises numerous serious regulatory issues, some of which might be addressed by imposing sanctions on the utility for failing to comply with the Board's order. However, it still implicitly approves utilities ignoring direction from the Board.

Alternatively, the Board can disallow the spending in excess of approved amounts and approved reallocations, which in this case may involve disallowance of tens of millions of dollars of actual spending that generated real DSM results.

Neither is a particularly palatable result.

SEC is loathe to recommend the Board retroactively allow improper spending, even attached to sanctions. This would open the door to future situations in which utilities ignore Board orders because they think they can.

On the other hand, SEC is equally loathe to recommend that the Board disallow recovery of tens of millions of dollars of successful utility DSM spending. While that would certainly get the Applicants' attention, it has the appearance of being an excessive response to the current situation.

SEC therefore admits that it does not have a recommendation to make to the Board on this issue. All possibilities appear to us to be equally unacceptable.

The EM&V Process

The Applicants continue to complain about what they now regularly refer to as the "OEB staff-led" evaluation and audit process. They appear to be focusing, this year, on three main complaints:

1. They continue to be denied current credit (and shareholder incentives) for customer interactions they had ten or twenty years ago (called “secondary attribution”).

2. The EAC did not go along with the utilities’ preferred approach of applying 2016 gross realization rate and net-to-gross to 2017 results, i.e. don’t audit 2017 at all.

3. There have been delays in the audit process, which didn’t happen when the utilities were able to manage it with less transparency and independence.

These complaints have no merit, and in any case issues such as these should be addressed in the next framework.

Secondary Attribution. Generally speaking, the Board’s approved DSM programs operate on the premise that the utilities are given a) a budget (from the customers) to spend in a year on DSM programs, b) a target for achievement with that budget, and c) a shareholder incentive based on the actual level of achievement relative to target. The budget, target and incentive are annual in nature, and there is an annual cap on the incentive. There is limited ability to move budgets between years, and certainly targets are limited to a single year. The whole system is designed to operate on a single year basis, despite the regular acceptance by all parties that influencing efficiency decisions is fundamentally a multi-year activity.

In fact, the utilities do things in one year (marketing, training, personal contact with customers, etc.) that influence the decisions of customers in later years. The Board wants the utilities to do that, and the customers want that as well. That is an important factor in getting effective DSM over the longer term. Its just that the Framework is not set up to take that into account.

The utilities are concerned that, when free ridership is determined, their influences from previous years are not taken into account. There are basically two categories of prior year influences that have to be considered.

First, individual projects are often the result of a multi-year process of working with the customer. The utility first engages with the customer in a review of options in year one, and with technical staff develops a recommended approach to efficiency. In year two, the customer has to go through its internal decision process to consider the recommended approach, particularly if the project has significant impacts. Utility support of internal staff is important to getting that approval. Then, in year three or even four, the approved project is actually implemented.

The current NTG approach captures all of that interaction. All project-specific influence by the utility – support, training, incentives, etc. – is included in the surveys designed to determine why a customer went ahead with the project. While some might object that much of the spending came from prior year budgets, in general there is a consensus that all of these influences should count for NTG purposes.

Second, customers sometimes implement a project, not because the utility worked with them on that specific project, but because the utility has in the past worked with them on other projects, whether similar or not.

The simplest example is a procurement or other internal protocol. In year one, the utility works with the customer to identify a type of improvement in their equipment. That results in a project in which the customer implements, say, a destratification fan in one of their buildings. That project is duly incented, and is counted as utility influence.

After a couple of years of testing of the new equipment, the customer determines that it works well, and pays for itself in short order. A protocol is developed by the customer that all buildings will have destratification fans if they meet certain criteria. They start installing the fans, year after year. Each year they go to the utility and say: "Hey, we installed another destrat. Is there another incentive for that?" The utility issues a cheque, and claims credit for those savings.

This is referred to as secondary attribution. The utility didn't influence the specific project with their current programs, but their past actions did have an influence on the customer's current behaviour[10].

The problem is that, at some point, this is no longer influencing customers to change their behaviour. It is simply order-taking. The question is whether the Board intends that the substantial budgets and shareholder incentives the customers provide to the utilities are for order-taking, or for new actions by the utilities to influence customer behaviour. What is it, in fact, that we are incenting the utilities to do today? How does that influence the annual nature of targets, and caps on incentives, and similar issues? Is our current annual incentive properly designed to incent what we are trying to incent? Should the utilities continue to give customers incentive payments when the customers will implement the measures anyway?

SEC believes this is a complex question, and one that should not be decided in a one-year clearance proceeding. This should be addressed by the Board in the next Framework, and a workable solution that a) doesn't allow the utilities to clip coupons forever, but b) incents long term thinking on behalf of the utilities, can be developed.

In our view, this is not something in which the Board needs to reinvent the wheel. Much work has been done over the last 50 years on sales commissions (the shareholder incentive is similar to a performance-based sales commission) and how they work, including the nature of continuing and trailing commissions. Much of that learning can be applied to this situation, but only if the full context is understood.

Therefore, with respect to secondary attribution, SEC believes that the status quo should be maintained until the next Framework. Multi-year efforts to influence customers on this year's projects are still fully counted, but historical influences that have already been incented are not counted again and again.

Approving 2017 Results Without an Audit. The EAC had a lengthy discussion, over multiple meetings, about the best way to go forward from 2016, given that the EM&V process was behind schedule much more than any member of the EAC thought was OK. A number of proposals were made and discussed, many of them in writing and presented by EAC members, and by the EC. Two of those proposals merit specific comment.

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[10] It is often thought of as an additional type of spillover, but it is not because the customer participates in the programs with the new projects.

The utilities made several proposals, but the one that they are asking the Board to order today is that the 2017 audit be skipped entirely. Instead, the gross realization rate, net to gross, and all other factors from 2016 would be applied to 2017 without any further evaluation.

Some members of the EAC were concerned that this would result in the utilities' results for a year – 2017 – being accepted without any audit for the first time in many years. This could, potentially, undermine the credibility of the utilities' results, and the Board's oversight of their DSM spending. Handing the utilities $15-20 million of shareholder incentives for results that have not been reviewed at all could be seen by customers as a failure of the Board to protect their interests.

The alternative that the EAC selected was to treat 2017 and 2018 as one period (which is statistically just as valid), and carry out gross savings reviews (CPSV for custom) for the two years together. The utilities objected that the net to gross analysis, if carried out on the same combined basis (which was the original proposal), would mean that customers were being asked net to gross questions for projects two years into the past, a complaint the utilities have voiced multiple times with respect to NTG surveys.

To ameliorate that concern, the EAC decided to do the NTG study only on the 2018 program, but apply it to both years. Since program delivery was virtually identical in both years, that was considered a workable solution that met most concerns, but moved the schedule back on track.

SEC believed at the time that the two-year solution was implemented by consensus of the EAC, but now it appears that the utilities think they were vehemently opposed to that option throughout. We accept that they were opposed, despite our notes on the meetings, but in any case the two year solution is the better option, and further it has already been implemented. Any change now would only result in further delay.

SEC therefore submits that the Board should reject the Applicants' proposal that the Board interfere in the EM&V process for 2017 and 2018. It is working precisely as it should, speeding up the process and getting reliable results while ensuring that all years are properly audited.

Delays. The Applicants continue to be very concerned that the EM&V process under the new, more transparent and independent approach, has lagged behind the time frames the utilities were able to deliver when they were in charge. SEC has three comments.

First, the main reason the current EM&V process is behind schedule is that it could not start until after the EB-2015-0029/49 decision. It was thus already behind schedule by 7-8 months before it even began, and it had to start from scratch with no history. Of course the couple of years took longer.

Second, many of the delays were the result of delivery of information by the utilities to the independent Evaluation Contractor, and other delays initiated by the utilities.

In the former regime, the utilities would provide to the auditor and the CPSV contractors whatever information they wanted, whenever they wanted. Often information was provided in meetings and discussions that were private between auditor/CPSV contractor and utility.

In this new regime, the independent auditor, the Evaluation Contractor, decides what information they need, and when, and that information is provided in a formal and (mostly) transparent process. Time and time again the utilities objected to the information that was requested, the form in which it was requested, or the timeframes proposed by the EC. A review of the timeframes of the 2015 and 2016 audits would show that some of the target deadlines were pushed back because the EC needed to wait for utility information.

The utilities also kept coming back to issues again and again, as if they could insist on their point of view in the interests of consensus. This led to lengthy discussions, much like in the former TEC, until OEB Staff finally starting setting time limits on debate in the interests of moving things forward.

Third, there was absolutely some aspect of the delays that arose because a) OEB Staff had to take issues back for internal discussion, b) the EC did not produce results as quickly as originally planned, and c) members of the EAC other than the utilities engaged in extended discussions of some issues.

The interesting thing is that those last problems have largely been resolved. Staff is ensuring that their view of issues is not on the critical path for the process. The EC has implemented tighter time controls and a more visible overall schedule, and that appears to be working fairly well. All members of the EAC appear to be more conscious that results have to be delivered in a more timely manner.

SEC would be the last to suggest that the timeliness of the current process is perfect. It isn't. However, significant improvements have been made, and it is on the right track.

Conclusion. SEC submits that the utilities' continuing complaints are fundamentally a waste of the Board's time, and simply a reflection of the utilities' loss of control of the process. SEC believes that the Board should direct the Applicants to save their complaints for the next framework discussion, when the whole EM&V process can be reviewed thoroughly.

On the other hand, SEC also believes that it would be useful for the Board to make very clear to the Applicants that the next framework will not include giving control of the evaluation and audit process back to the Applicants. If nothing else, the shift of control of the process to OEB Staff has demonstrated that, despite many improvements over the years, the old process lacked sufficient independence and transparency.

Conclusion

SEC therefore submits:

1. The Board should not allow the adjustment to the targets for NTG that the Applicants have proposed.

2. With respect to the DSMVA:
    a. The wording of the accounting order should be modified to be consistent with the Report of the Board in the Mid-Term Review, and
    b. The rollover of the $2.8 million 2016 underspend should not be permitted.

3. The Board should consider how to deal with the aggressive budget reallocations of the Applicants in 2016.

4. The Board should not act on the complaints of the Applicants with respect to the EM&V process. These issues should be dealt with in the development of the next Framework.

SEC submits that it has participated responsibly in this proceeding with a view to maximizing its assistance to the Board, and requests that the Board order reimbursement of its reasonably incurred costs for so doing.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.

Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties