



**BY EMAIL and RESS**

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February 10, 2020  
Our File No. 2019-0159

Ontario Energy Board  
2300 Yonge Street  
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Toronto, Ontario  
M4P 1E4

**Attn: Christine Long, Registrar and Board Secretary**

Dear Ms. Long;

**Re: EB-2019-0159 – Enbridge Dawn Parkway – SEC Issues List Submissions**

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #1 in this proceeding, this letter sets out SEC's submissions with respect to the Issues List, and the scope of this proceeding.

**Introduction**

SEC believes that there are three general issues that need to be addressed in considering the scope of this proceeding:

1. The extent to which planning considerations are included in scope, given that the IRP Proposal in the Application will be dealt with separately.
2. The risk of stranded assets as a result of this proposed project.

3. The jurisdiction of the Board to consider, in assessing facilities applications, the environmental consequences of those facilities once built.

We will deal with each of these separately, although of course it is self-evident that they are tightly inter-related.

### **Integrated Resource Planning**

The Board will be aware that SEC regularly intervenes in leave to construct applications with a view to assessing whether the Applicant has considered deferral or reduction of load through the use of DSM. Enbridge has regularly ignored this requirement of the Board, and usually files an LTC application when it is too late to initiate DSM efforts that it should have done long before. The repeated excuse is that the Board's policies do not allow Enbridge to replace pipe with conservation. The real reason is that Enbridge makes a return on new pipe, and makes much less (or even nothing) on DSM. It is no surprise that Enbridge wants to put pipe in the ground. That's how it grows its revenue.

The Board has determined that the Applicant's IRP Proposal will be reviewed separately. This makes considerable sense, given that it is a generic issue and, as the Board has pointed out, "raises issues of broad applicability".

SEC believes that Issues #1 and #3 on the Draft Issues List, as currently worded, make clear that using conservation, energy efficiency, or other demand-side options either to reduce or defer the need for the project, or as an alternative to the project, are all in scope in this proceeding. Those questions necessarily involve consideration of integrated resource planning, and whether the Applicant has implemented appropriate IRP protocols in this case, but do not require a generic IRP solution for gas facilities projects.

SEC also believes Issue #2 on the Draft Issues List, as currently worded, makes clear that using the same options to change the size, direction, or configuration of the capital assets being proposed is also in scope in this proceeding.

These are issues that have been addressed by the Board in past LTC applications, precisely in the manner we are suggesting above. The current Application is the same, except that the issue is perhaps writ large because the number of customers whose demand will impact this pipe is considerably larger. When we were talking in EB-2018-0097 about the demand for the Bathurst Reinforcement, the number of customers whose demand could matter was in the thousands. In this case, that number is in the millions.

SEC submits that it would assist all parties if the Board confirms that the issues of deferring, reducing, or even eliminating demand through conservation, energy efficiency, or other demand-side options are already included in Issues 1 through 3 of the Draft Issues List, just as they were considered by the Board in other recent LTC applications.

### **Stranded Assets**

SEC remains very concerned that capital spending by the Applicant on increasing capacity is a recipe for disaster, because it runs a material risk of creating stranded assets that will either a) present a cost burden for future customers, or b) risk the financial viability of the utility, or c) create a political and fiscal issue for future governments.

This leads to three concerns.

First, where the Draft Issues List refers to future forecasts – whether of costs, demand, or anything else – SEC assumes that the issues include the risks surrounding those forecasts. This has always been true in the past, and we would assume it continues to be true here.

In this case the risks take on an added importance, because they engage material uncertainties about the future of carbon-based fuels in Ontario. Is the gas price forecast underlying the demand assumptions robust when applied to a forty-year horizon in a lower carbon future? What restrictions will be placed on gas consumption, either through pricing (such as carbon taxes or carbon pricing) or through tougher regulation of gas-burning equipment or buildings? There are a list of assumptions like that. The economic viability of this project will likely depend on those assumptions.

SEC submits that the Board should make clear, in its decision on the Issues List, that the risks associated with all forecasts driving economic viability are in scope in this proceeding. This means that questions on these forecasts, and their sensitivity to different futures, should be allowed, as should evidence by parties on those sensitivities and the probabilities associated with them.

Second, and perhaps flowing from the first concern, Issue #4 appears to limit consideration of economic viability to a model developed some years ago.

In our submission, this is no longer a useful restriction. Economic viability must keep up with the times. It is legitimate to ask whether, for example, this project is viable if its capital cost has to be paid back in twenty years, or even ten. It is legitimate to ask whether this project is viable if it is subjected to “stress tests”, much as those that apply to mortgage applicants, but in this case testing viability against different demand, gas supply, and environmental assumptions.

The current model assumes that life is going to go on largely as it does today (i.e. natural gas is better than any of the alternatives). It does not assume the “carbon-based fuels are a legacy business” paradigm that may be more appropriate today.

SEC therefore submits that testing the economic viability against other models – not just the current Board model – should be in scope.

Third, and most important of all of these concerns, the upstream and downstream environmental impacts of the gas that will flow through this pipe actually consist of two different types of impacts: 1) ways that the extraction and use harm the environment, and 2) (because of #1) ways that the economics of natural gas capital spending are at significant risk. We will deal with the relevance of environmental harm in the next section, but it should not be in dispute that economic risks of environmental impacts are something that the Board must consider in determining that a facility is in the public interest.

The Board has no jurisdiction over fracking in Pennsylvania. Even if one believes that fracking is a terrible thing (as some parties do), this Board doesn't get to decide whether it should be allowed.

On the other hand, if there is a significant risk that the regulators who do have that jurisdiction will ban or limit the practice, is that a factor that should concern the Board? Clearly the answer is yes. The easiest way to confirm this is to ask the question: what if a ban on fracking in all nearby jurisdictions was certain? The answer is that such a ban would have to impact the Board's assessment of the economic viability of facilities depending on that gas. This is just math. Similarly, if the probability of such a ban was 90%, or 50%, that probability would have to be factored into the viability calculations, and so on.

Customers are understandably concerned about the possibility that they will be saddled with the cost responsibility for stranded assets. Under the current framework, utilities make forecasts of the future in which new assets will ultimately be cost-free to existing customers. Those are forecasts, and they are not always right. Usually, no-one asks whether that risk should properly be allocated to the customers, or whether the utilities should bear part of that risk. In the past, those risks were considered small enough, perhaps, to be manageable. That is not the case today.

In this case, given the nature of the project, upstream and downstream environmental impacts have a significant potential to affect the economic viability of the project. This is not just carbon taxes. If New York decides that it no longer will extract gas in an environmentally damaging way, there will be less supply in Ontario, and costs will increase. Increasing costs means declining demand, not just for customers whose demand is at the margin, but also in the longer term for all customers if users replace natural gas equipment with alternative options.

As a simple example, if there is a major shift to geothermal in the 905 region due to more costly natural gas supplies, or there is a shift in the market to significantly more energy efficient office buildings or homes, there is a reasonable chance that the proposed project will not pay back its capital and return through revenues over its normal life expectancy. It will become a stranded asset.

SEC submits that the Board should expand Issue #4 to include economic viability generally, and should not limit it to the Board's current model. Further, the Board should expressly determine that the economic impacts and risks associated with upstream and downstream environmental impacts are expressly in scope in this proceeding.

### **Upstream and Downstream Impacts**

SEC's involvement in this proceeding is focused on the economic impacts of the decision, and particularly the long-term rate impacts. For us, this is primarily a least-cost-planning exercise. It is for this reason – mainly – that we have divided up the issue of upstream and downstream impacts into the economic side, and the environmental side. As discussed above, in our view the economic impact of all upstream and downstream environmental risks is squarely in scope, and engages the Board's primary focus as an economic regulator.

There is another side to the upstream and downstream impacts, and that is a purely environmental one. This could be expressed as “Even if the project is economically viable in all reasonable futures, should the Board still say no because the upstream/ downstream environmental impacts are just too bad to allow?”

Some parties in this proceeding may well argue that the Board should disallow this project because “fracking is bad”, or because “carbon emissions are bad”, without making a connection to economic viability. In this respect, their arguments would not be completely crazy. Many environmental impacts the Board does consider under its normal approach are not expressly tied to economic viability, and certainly many indigenous issues, including Issue #9, are not about math. They are about right and wrong, good and bad. It is not ridiculous to say that upstream and downstream impacts arising out of this project should be placed in the same category.

SEC is not taking a position on this. It is a complicated issue, with a lot of subtleties and political overtones. It is not clear that there is a right answer. Focusing on economic considerations is in the Board's wheelhouse, and as a practical matter engages most of the environmental issues indirectly in any case. Facing those environmental issues in a more normative way may not be necessary, especially given that it raises tricky issues of jurisdiction and statutory interpretation.

On the other hand, SEC is very concerned that the Board not make any general statements limiting its jurisdiction on purely environmental issues. We say this for three reasons:

1. While considering environmental issues separate from their economic risks may not be necessary in the current case, that may not be true in future cases. In our view, it is not wise for the Board to foreclose or limit future consideration of environmental factors.
2. Utilities and others may use any determination by the Board that it does not consider environmental issues in their own right to try to limit the Board's scope in many other areas, including some in which the Board today does exactly that. This is true whether the Board seeks to delineate categories of impacts that it should consider or not (e.g. local impacts of a pipeline vs. impact of the use of the pipeline after it is built), or the Board seeks to limit environmental considerations to those with measurable economic impacts or risks. Narrowing of the scope of environmental issues will inevitably be used by some

parties, through analogy or otherwise, to narrow the scope of other non-economic factors, not just in facilities cases, but also in rate and other cases.

3. There is a reasonable likelihood that, if the Board determines that it has no jurisdiction to consider upstream/downstream issues separately from their economic risks, one or more parties will feel compelled to appeal this determination, as it would then become an issue of considerable importance. The Board should not invite appeal to the courts unless it is absolutely necessary, which does not appear to be the case here.

For these reasons, SEC believes that if the Board excludes upstream/downstream environmental issues (absent their economic impacts) from the scope of this proceeding, it should make clear that this determination is driven by the facts of this case, and is not a decline by the Board to consider the merits of upstream and downstream environmental issues in other cases.

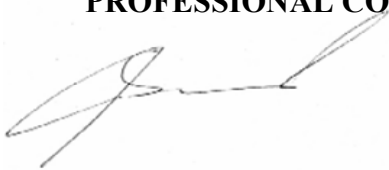
### **Conclusion**

With the proposed clarifications, including potentially a re-wording of Issue #4, SEC believes that the Draft Issues List is appropriate.

With respect to the inclusion of upstream/downstream environmental impacts, SEC submits that the economic impacts and risks arising out of those environmental impacts are clearly in scope, as they have been in the past. Considering those environmental impacts separately from the economic impacts and risks is not, in our view, necessary in this case, so SEC recommends that the Board not make any limiting statements on its jurisdiction to deal with those environmental impacts.

All of which is respectfully submitted.

Yours very truly,  
**SHEPHERD RUBENSTEIN  
PROFESSIONAL CORPORATION**



Jay Shepherd

cc: Wayne McNally, SEC (email)  
Interested Parties