EB-2019-0271

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application by Enbridge Gas Inc. for an order or orders pursuant to Section 36(1) of the Ontario Energy Board Act, 1998, extending the approved 2020 Demand Side Management Plan for one year into 2021 and approving the 2021 Demand Side Management Plan.

Reply Submissions of the Green Energy Coalition (GEC)

(In Reply to the Submissions of Enbridge Gas Inc. dated April 24, 2020)

GEC filed a motion on Friday, April 17, 2020 ("Motion") seeking an order requiring Enbridge Gas Inc. ("EGI","Enbridge" or the "Company") to provide "a full and adequate response to the following Interrogatories: Exhibit I.GEC.1 and Exhibit I.GEC.2". Pursuant to Procedural Order No. 2 GEC herein provides its reply to the submissions of Enbridge Gas.

Enbridge effectively argues that the Board's process is toothless – it can only be legitimately used to approve a rollover without any changes at any level:

In answer to GEC's IRs Enbridge has provided averaged data at a program level and resisted discovery of measure level data such as measure participation rates that could support intervenor requests for changes to measure inclusion, or measure and program emphasis, stating that:

> "any proposed change to program offerings of any magnitude will necessarily require extensive changes to targets and scorecards. This will defeat the Board's intent of there being no material changes"[1]

Enbridge also argues that small changes amount to "micromanagement":

[1] EGI submissions at pp. 1-2

> Enbridge Gas submits that the only reason underlying GEC's request is its intent to both micromanage and propose material changes.[2]
>
> "One can only imagine the mayhem in future proceedings…"[3]

We are left wondering what possible purpose Enbridge imagines the Board intended for this process.

In our submission, Enbridge's stance misrepresents and denigrates the Board's current process, diminishes accountability, denies intervenors meaningful participation and simply ignores the Board's language in Procedural Order No. 2:

> "The OEB notes that the information requested by GEC appears to be within the scope of the proceeding as defined by the OEB in Procedural Order No. 1. To reiterate, the OEB does not expect material changes to the previously-approved DSM plans during a transition year. However, it is appropriate to ensure that previously-approved programs continue to deliver cost-effective savings in 2021, and that results can be maximized in order to provide good value to customers."

The Board's decision to invoke a full hearing process and its directions in P.O.2 indicate that the Board does not wish to treat this decision point as equivalent to an annual clearance review during the 5 years of a framework period. Rather, before extending the period the Board wishes to test whether the DSM program continues to provide "good value" and the Board, while "not expecting material changes", wishes to ensure "maximized" results. We interpret the Board's directions as in effect asking two questions:

First, is it appropriate to extend the 5 year plan for a further year without material changes? If not, we presume the 2021 plan would be dealt with in the forthcoming framework review. Baring dramatic revelations, GEC expects that the answer to this first question is yes.

Second, if it is appropriate to extend, as we expect is the likely scenario, what, if any, course corrections are important to ensure, in the Board's words, "maximized" results and "good value to customers"? We interpret the Board's direction as wishing to avoid significant changes to the framework but not restricting this to a yes/no determination.

But Enbridge ignores the distinction between this process at the end of a framework period and the annual reviews during a 5 year framework period when it goes on to ask:

> What was the point of a multi-year DSM decision by the Board? If approved DSM programs can be second guessed, in this case in a proposed rollover, what is the benefit of the multi-year approval and the Mid-Term Review? What is the point of having a Framework that guides the Company's selection and design of program offerings?[4]

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[2] Ibid p.17
[3] Ibid p.15
[4] Ibid at p.15

Thus Enbridge is both precluding any consideration of even a slight change to the existing programs and at the same time simply presuming that the Board will conclude that a rollover is appropriate. Surely the purpose of the proceeding is to test both of those matters. GEC submits that it is consistent with the Board's directions to investigate whether minor redirection is appropriate to support a rollover and, to ensure that there are no major problems that would preclude a rollover. To do so we seek access to the facts, unobscured by data averaging.

Enbridge mischaracterizes GEC's generous offer to settle the motion by accepting measure participation levels as somehow evidencing bad behaviour rather than an effort at compromise intended to ease the company's burden in responding, and avoid the cost and delay of a disputed motion:

Enbridge argues:

> "Enbridge Gas further notes that what GEC requests appears to be overly broad for its stated purpose. In an email from Counsel for GEC to Counsel to Enbridge Gas dated April 22, 2020, which was copied to Board Staff and Board Counsel, Mr. Poch stated: "I wanted to make it clear that we would be content with the 2017 and 2018 data that has already been verified by the evaluator, as well as the "unverified" 2019 data. Our main interest is in understanding participation levels by measure, how much each measure is saving on average, etc. We don't need those numbers to be precise to the third decimal point to make the recommendations we may consider making" …
>
> "As GEC appears to already have existing views about certain program offerings, it could have limited its interrogatory to questions about and data supporting those program offerings rather than asking for extensive and detailed data on the Company's entire portfolio."[5]

GEC's offer was not a denial of the value of broader discovery, it was a proposed compromise. For Enbridge to conclude otherwise presumes that GEC has X-ray vision and already knows what the data would reveal. We do not, nor do other parties, nor does the Board.

GEC provided an example in its motion of a circumstance where the context had changed significantly (furnace efficiency regulations) such that the measure mix or program emphasis might need to change to avoid undue waste of ratepayer funds, to avoid inequity as between participants and non-participants, or unjust enrichment of the company. Measure level data is the only way to analyze this and to determine if other such problems exist and to determine whether adjusting to this new reality (and potentially others) can be accommodated within the flexibility rules already in place, or requires further guidance from the Board.

Enbridge's response to that example is to note:

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[5] Ibid at p. 2

> There is no question that the change in government regulations had an impact but with recent changes made to the program offering to appropriately reflect the new furnace standard, the ***program*** offering remains cost effective. GEC does not suggest otherwise.[6] (*emphasis added*)

It is precisely the distinction between program data and measure data that GEC's example reflects. Enbridge's response blurs that distinction. The fact that this program (combining multiple measures) may be cost-effective says nothing about the wisdom of offering $750 incentives to customers to achieve what may amount to a 1% improvement in furnace efficiency – *even less once free ridership is accounted for*. Indeed the fact that Enbridge has stopped offering incentives for its stand-alone furnace replacement program[7] suggests that furnace replacements, even with the economy of multi-measure delivery, would likely fail the TRC or UCT/PCT tests.

By referencing this example GEC does not wish to suggest that all measures in a multi-measure program must achieve similar cost-efficiencies. Indeed, GEC has long advocated for in-depth treatment to capture scope and scale efficiencies and avoid lost opportunities. But this does not extend to diverting large proportions of the limited DSM budget to incent non-economic measures with minimal societal value. That would not meet the Board's stated purpose of this proceeding, to "ensure that previously-approved programs continue to deliver cost-effective savings in 2021, and that results can be maximized in order to provide good value to customers"

Enbridge claims to have provided the requested data while simultaneously arguing that it should not do so as that would unleash a tsunami of debate.

Enbridge's strategy is best described by the Latin phrase *sucking and blowing*:

> "One can only imagine the mayhem in future proceedings (perhaps this proceeding) if all stakeholders undertake the same detailed review as GEC proposes…"[8]

Yet Enbridge notes that:

> "measure level audited DSM results details for the 2017 and 2018 program years can be found in the 2017 and 2018 Natural Gas Demand-Side Management Annual Verification Reports available on the Board's website…GEC Interrogatory No. 2 asks the Company to provide participation levels – in each way that they may have been tracked – for each non-resource acquisition program for Union Gas and Enbridge Gas in 2017, 2018 and 2019. As also noted below, this information was indeed provided."[9]

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[6] Ibid p. 8
[7] Ibid p.9
[8] Ibid p.17
[9] Ibid p.3

GEC's interrogatories were due March 16th (presumably before the March 13th verification reports were posted). GEC was not alerted to the availability of the 2017 and 2018 verification reports before Enbridge's reference in its reply submission of April 24th. Enbridge's IRRs do not refer to it. Indeed, based on conversations with counsel during March we understood that verification reports would likely not be available until later in May – too late to inform the current proceeding. This may be an instance of simple misunderstanding and the reference to a May date was only in regard to the 2019 data. Having now examined the 2017 and 2018 verification reports, we note that some of the data we seek for 2017 and 2018 is included. For example, we can see how many of each C&I prescriptive measure were installed and the net savings per measure. However, the verification reports do not provide other important information such as the average or total rebate dollars per measure that would be needed to inform any re-allocation proposal. Nor does it provide gross savings and assumed net-to-gross (or free rider) factors, which would be of help to understand the impacts of redirected incentives (which would affect free ridership). It is apparent that the company was able to provide the data necessary for the Evaluation Contractor to create these tables in summary form. Thus, the Company must have sources with all the variables necessary to compute these summary results for 2017 and 2018.

Moreover, Enbridge has not provided any 2019 measure data for resource acquisition measures, nor has data been provided for 2019 market transformation programs.

At page 5 Enbridge offers:

> If it would be of benefit to the Board, the Company is prepared to generate a further table similar to SEC 12, Attachments 3 & 4 for 2019 before the 2019 Draft Annual Report is provided to the EC and file it in this proceeding. Enbridge Gas believes that it could generate this table by May 1, 2020.

This would not be an adequate response to the IRs as SEC 12 does not in fact provide measure level data. The same is true of the market transformation data that Enbridge provided in SEC 12 – no measure level data is included.

Further, at page 6 of its response Enbridge, with a slight of hand, notes:

> "in its original interrogatory, GEC acknowledged in part c), "For programs for which measure level data are not available (e.g. because savings are tracked at a measure bundle or program level only), as well as for C&I custom programs, please provide average per participant savings, incremental cost, measure life for the measure bundle." As noted in Table 1, and provided in Attachments 3 and 4 to the response to SEC Interrogatory No. 12, this is the level of data which Enbridge Gas has already provided."

EGI's twisted logic treats GEC's practical acceptance of averaged data *where specific data simply does not exist* as a rationale to withhold specific data *where it does exist*!

Enbridge makes *in terrorem, and* unfounded, presumptions about what GEC intends to eventually argue, and at the same time suggests that we should have made our suggestions for change as part of the interrogatory effort.

Enbridge resorts to unfounded presumptions about GEC's intent. For example, at p.11 Enbridge argues:

> "…should GEC propose the elimination of the HER program offering and argue that all of these moneys be directed to, for example, a particular commercial or industrial measure, this will upset the scorecards which were approved by the Board in its approval of the 2015-2020 DSM Plans filed by the utilities and as adjusted by the Board's Mid-Term Review. Targets will need to be reset, as will the methodology to determine the shareholder incentive. Such a change is not mere tinkering. Changes of this nature will require a major retooling of important aspects of the evaluation methodologies."

Apparently, here we are not trying to micro-manage, rather we are accused of planning to upset the applecart. We can assure the Board that we do not foresee arguing for the elimination of the HER program.

What do we propose? That of course depends on what the data reveals. Yet Enbridge suggests that intervenors are obliged to have fully formulated and expressed the intent of their arguments in the IR process:

> "If GEC believes that there are program offerings that could benefit from their knowledge, then such proposals should have been advanced in its Interrogatories."[10]

Enbridge's arguments are based on mischaracterizations of the purpose of the interrogatory process.

Their presumption about what eventual arguments may be made ignores the fact that interrogatories are a discovery process, the need for which is to determine where problems exist and where they do not. As the Board has noted in P.O. no. 2, the two IRs are, on their face, within the scope of the proceeding. There is no basis to assume that provision of information will lead to intervenors making arguments that ignore the Board's intended scope of the proceeding.

The suggestion that IRs should disclose the intervenors' eventual objectives simply confuses the purpose of discovery with that of argument.

Enbridge suggests that providing the data requested would be onerous while admitting that it is indeed readily available.

Enbridge notes:

[10] Ibid p. 17

> "the EC requests a "flat file" of program data for the purposes of auditing the results of each program year. This file requested from Enbridge Gas does not include formulas and calculations as characterized by GEC, in GEC Interrogatory No. 1."

While GEC made its preference for 'live files' clear, the provision of the 'flat files' would certainly go a long way toward meeting our request, yet despite acknowledging their availability Enbridge has not so offered.

It is apparent that providing the requested data is not onerous:

> "In respect of GEC's alternate request for all of the raw data for the years in question, excluding the important and resource consuming task of sanitizing the data of all customer information and commercially sensitive data, **there is minimal effort required in providing the raw data in its current state**."[11] (emphasis added)

As to Enbridge's concern about "sanitizing", removing customer identifiers or summing a row or column of data is a simple matter.

Enbridge obfuscates by raising concerns about customer confidentiality, GDAR and Evaluator and Evaluation Committee non-disclosure agreements.

At page 4 of its submissions EGI states:

> "Enbridge Gas notes that the EC as well as all other supporting program evaluators are engaged pursuant to contractual obligations which obligate them to not disclose customer specific or commercially sensitive information which might reveal information relating to specific customers and their commercial activities. As well, these evaluators are contractually prohibited from making use of the data for their own commercial purposes. The Company further notes that members of the Evaluation and Audit Committee are bound by similar obligations and that the key consultant for GEC, Mr. Chris Neme, is a member of the Evaluation and Audit Committee ("EAC"). The Gas Distribution Access Rule ("GDAR") prohibits Enbridge Gas from disclosing, other than to the Board, consumer information unless sufficiently aggregated.5 This mandates that the Company must ensure that the data released does not violate this rule. The GEC Notice of Motion makes no mention of these important customer and shareholder safeguards."

This is a red herring. In GEC's IRs and in its discussions with Enbridge counsel attempting to reach a settlement we have repeatedly indicated that we are content for customer identities to be obscured or data columns collapsed if needed to protect identities. Again, removing customer identifiers or summing a row or column of data is a simple matter.

[11] Ibid p. 16

The fact that Mr. Neme sits on the Evaluation Committee is irrelevant. In that capacity he does not have access to the detailed data and even if he did, he would not be at liberty to disclose it without permission.

If any genuine concern about confidentiality remains it could be addressed by undertakings as is the Board's usual practice.

Enbridge makes the unfounded and disrespectful suggestion that GEC or other intervenors will manipulate and misrepresent data and it will be untested, while resisting disclosure, let alone testing of EGD's data.

> "As well, the Company has a very practical concern with the release of raw data which can then be manipulated by a party with the "revised" results being presented to the Board."[12]

Apparently we are not to be trusted to make recommendations based on detailed data but Enbridge is to be trusted with approval to spend $130 million of customer funds without disclosure of that same detailed data.

If the Board directs Enbridge to respond with the detailed data and GEC ultimately proposes any changes based on its findings from that raw data, it will of course be up to GEC to display, in a transparent fashion, the basis for any such proposal.

Conclusion

Enbridge seeks approval of a $130 million budget and access to up to $20 million in shareholder incentives.

Enbridge has not in fact provided the measure level data GEC requested.

It can be seen in the furnace example not only that the company is using ratepayer money to incent Home Retrofit (HER) participants to install gas furnaces that are only 1% better than regulations require, but that such incentives are likely to comprise a substantial portion of the Company's Home Retrofit program spending. Moreover, it is does not appear as if the Company has proposed changes to the Home Retrofit participant performance metric that will be "rolled over" into 2021 (as currently constructed for 2020, the metric counts a participant if it has installed two major measures, one of which can be a furnace). Surely it is reasonable to investigate whether significant investment of ratepayer funds and company effort – as well as shareholder performance payments – is warranted for what appears to be minimal societal benefit. If GEC were to simply argue that, unaided by recent data, the Board would not be assisted. There would be an incomplete picture of the issue and no basis to suggest where the

[12] Ibid p.13

budget might better go. This is one possible example of a legitimate issue that GEC and other parties could raise based on the limited measure-level data that has been made available to date. Other examples may well be buried in the more detailed data Enbridge seeks to obscure.

Ironically, Enbridge resists disclosure of data by referencing its "accountability".

> Enbridge Gas is accountable to the Board and ratepayers. It should remain the entity that determines the appropriate program mix to maximize results without micromanagement from outside entities.[13]

While we respect the need for Enbridge to retain flexibility in its DSM efforts, we do not equate that with a need for a black box approach that denies accountability at key forward looking decision points. Enbridge is indeed the entity that is accountable. We simply ask the Board to enable that accountability.

All of which is respectfully submitted this 28th day of April, 2020

David Poch
Counsel for GEC

[13] Ibid p. 15