



**BY EMAIL and RESS**

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Our File No. EB-2020-0091

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

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

Dear Ms. Long;

**Re: EB-2020-0091 – Enbridge IRP – SEC Issues List Comments**

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #1 in this proceeding, these are SEC's comments on the Draft Issues List.

**General**

SEC is concerned that the entire Draft Issues List starts from the premise that the proceeding is limited to considering, and either approving or rejecting, the Enbridge IRP Proposal, either with or without amendments. In our submission, this asks the wrong question, and runs the risk of being a wasteful use of the Board's resources.

SEC submits that this proceeding should seek to ask the question: "*What is the appropriate process and approach, including both scope and consequences, that Enbridge should use to incorporate IRP into its system planning process?*" This includes all aspects of the Enbridge IRP Proposal, but doesn't narrow the focus as the Enbridge proposal does.

While SEC understands that the Board has before it a specific proposal from Enbridge, it is also the case that the Enbridge proposal does not engage any of the individual statutory authorities of the Board (although it has impacts on many of them). For example, the proposal does not seek an order establishing any just and reasonable rates, but it does seek general guidance from the Board on how rates should be set in certain circumstances (e.g. capex vs. opex treatment of certain costs). The proposal also does not seek an order approving the use of a particular planning approach for a specific Leave to Construct project, but it does seek general guidance on appropriate planning approaches to avoid, defer, or justify proceeding with, capital projects generally.

We believe what is happening, in essence, is that the Board has convened a generic hearing on IRP for Enbridge, and has quite reasonably used the Enbridge IRP Proposal as the starting point for discussion.

There are practical reasons why the Issues List should treat this as a generic hearing on IRP, rather than limiting the proceeding to a yes/no determination on the Enbridge proposal. In the latter case, Enbridge can simply refuse to provide information, and engage with the other parties, on any approaches to IRP that are not within the four corners of the Enbridge IRP Proposal. This is not helpful to the Board.

A few examples of scope that needs to be in, rather than out, are:

1. Long term planning to ensure that capital spending is minimized, including load and peak demand forecasting that considers non-pipe alternatives long before new spending on any pipes is even being considered.
2. Tests used by Enbridge in system planning to determine if the pipeline infrastructure is sufficient to meet future demand, and whether those tests are too stringent, too loose, or should be modified in some other way.
3. Financial responsibility for stranded or underutilized assets arising out of overbuilding decisions by Enbridge. For example, to what extent should Enbridge be allowed to expand its capital infrastructure only if it is willing to take some or all of the risk that the assets will be utilized for the benefit of customers throughout their useful life.

We could give many other examples. The point is that the goal should be to have an approach, approved by the Board, that ensures that all cost-effective non-pipes approaches have been fully deployed before there is any consideration of adding more pipe. That approach, drawing from the Enbridge IRP Proposal, expert evidence, the experience in other jurisdictions, and the creativity of the Board, could use a variety of techniques, including financial incentives and risk allocation, new rate-making options, integration with DSM programs, probabilistic forecasting, and so on.

Our comments below therefore start from the premise that each issue should be more generic in nature, seeking to get the overall best approach rather than simply accepting or rejecting the Enbridge IRP Proposal.

### **Specific Issues**

The numbering below follows the Draft Issues List. Most issues have been reworded to be generic in nature. In some cases, we have comments on other changes we believe are appropriate, and why.

***1. What is the appropriate process and approach, including both scope and consequences, that Enbridge should use to incorporate IRP into its system planning process?***

SEC notes that whether any given proposal responds to past guidance and direction is not, in our view, the point. The right answer will almost certainly take steps beyond past guidance, perhaps even contrary to it, and since that guidance is not binding, it should not be determinative of the Board's decision in this proceeding. In fact, that same conclusion is implied by Issue #3 in the Draft Issues List.

***2. What is the legal effect of the Board's decision in this proceeding?***

It is important that the Board be clear on the statutory mandate it is exercising when it reaches its decision. By way of example, the Board could seek to create a binding IRP Rule under section 44 of the Act, but then would have to identify a subsection of section 44 that authorizes rules of that type. Alternatively, the Board could provide guidance, much as it does in a DSM Framework, that is non-binding but still helpful to the utility, other stakeholders, and future Board panels.

***3. Does the Board's IRP determination in this proceeding necessitate consequential changes to any other OEB policies, codes, or guidelines? If so, which policies, codes or guidelines might be affected, and how should these consequential changes be considered within the scope of this proceeding?***

***4. What are industry best practices for IRP applicable to the Ontario context?***

Because of the rewording of Issue #1, this issue may not be required, but it is probably helpful in any case.

***5. What is the appropriate definition of IRP, and what is the goal that IRP should seek to accomplish?***

- 6. What types of activities (IRPAs), other than adding pipeline infrastructure, should be considered by a gas distributor to ensure that capital spending on expansion/reinforcement projects is optimized over the long term?**

The issue as proposed assumes that there must first be a proposed facility project, before any consideration of IRPAs takes place. This is the wrong way around. Planning for facility projects should not even be started until the utility has first exhausted all non-pipes alternatives to balance forecast supply and demand. See below.

- 7. At what point in the planning process should non-pipes approaches be considered, and how should they be integrated into that process on an ongoing basis?**
- 8. What test or tests, if any, should be used by planners to determine whether forecasts of demand require consideration of facility projects? How should risk of insufficient peak load carrying capability be assessed, and at what point should adding peak load carrying capability, or implemented IRPAs, be considered necessary?**

This is a key issue that is not addressed. No plan has an absolute certainty that the system will meet all demand in the future. Enbridge system planners seek a very high level of certainty, but that comes at a cost, and biases the planning in favour of more pipe rather than alternatives. The acceptable level of risk that demand cannot be met should be a conscious decision, and should be guided by the Board. It should not be determined solely by the utility, because the ROE system means that the utility is naturally biased in favour of additional capital spending (i.e. *Averch-Johnson effect*, well accepted in the economics literature).

- 9. If the utility proposes to proceed with an IRPA, what approvals should be required to do so, and how would those approvals differ depending on the nature of the IRPA?**

Enbridge has proposed a single methodology. The statute does not contemplate that methodology. Different IRPA proposals will require different approvals, because they will engage different aspects of the statute (e.g. leave to construct vs. rates).

- 10. What rate-making approaches should be used to deal with the costs associated with IRPAs, and how should those approaches differ depending on the nature of the IRPA?**
- 11. How should the risks of insufficient pipeline capacity, and on the other side the risks of excess capital spending relative to achieved demand, be allocated between utility customers and shareholders and, if any risks are allocated to customers, how should they be allocated between customers?**

Enbridge seeks to have risks of IRPAs allocated to customers. That is only one part of the question. The other part is whether, if the utility overbuilds, the utility shareholders should take some of the risk for the excess spending.

***12. What reporting and monitoring of system planning decisions, including IRPAs, is appropriate?***

***13. What other components, if any, should be included in the Board's guidance and direction on IRP and system planning?***

**Conclusion**

SEC has sought to follow the Draft Issues List, but ensure that the scope of the proceeding allows full consideration of each underlying issue. We believe that an Issues List along the lines outlined above will facilitate a better review of IRP issues by the Board.

All of which is respectfully submitted.

Yours very truly,

**SHEPHERD RUBENSTEIN  
PROFESSIONAL CORPORATION**



Jay Shepherd

cc: Wayne McNally, SEC (email)  
Interested Parties