



BY EMAIL and RESS

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May 28, 2021
Our File: EB20210002

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Christine Long, Registrar & Board Secretary

Dear Ms. Long:

Re: EB-2021-0002 – Enbridge DSM Plan – SEC Notice of Intervention

We are counsel to the School Energy Coalition (“SEC”). We enclose SEC’s Notice of Intervention with respect to the above-mentioned proceeding.

SEC notes that the Applicant Enbridge Gas Inc. has requested expedited approval of the DSM budget for 2022, and the formula for adjusting the DSM budget from year to year thereafter [Exhibit A/2/1, p. 4].

SEC strongly objects to this proposal.

Enbridge is seeking a base DSM budget in this Application of just over \$916 million [Ex. D/1/1, p. 8]. The notice period for this Application ends on June 10, 2021. Enbridge is therefore proposing that the Board make a decision on close to a billion dollars of rates in 50 days.

It appears clear to SEC that it is not technically possible to conduct discovery, intervenor evidence, hearing, argument, and OEB decision in that period. Even if one assumes that there is no need for a technical conference, and an ADR is not to be ordered, the basic steps left cannot be completed in less than twelve weeks, plus the time needed by the Board to consider arguments and make a decision. The minimum elapsed time is therefore at least twice the length of time Enbridge is proposing for this decision.

The only other alternative would be for the Board to cut out all or part of the normal steps in the process, such as discovery or hearing, for example using a kind of “public meeting”, as Enbridge has proposed. Aside from any questions about the legality of such a determination, and whether it would meet the requirements of procedural fairness, it would clearly be an unprecedented step for the Board to take. The OEB has historically always resisted attempts by applicants to rush the process, wisely insisting that the OEB take the time necessary to make well considered decisions based on a complete evidentiary record.

SEC agrees that it is unfortunate the Enbridge DSM Plan has been filed this late. The timing will require the OEB and all parties to be diligent in keeping the process on track, so that a decision can be made in a timely manner. Given that the OEB issued its letter establishing an adjudicative process on December 1st of last year, could Enbridge have filed this Application sooner than May 3rd? Perhaps. However, whether or not that is true, it is likely irrelevant to the OEB’s process for this proceeding. This is not about whether Enbridge should have acted differently. It is about how the OEB should exercise control over its own process now.

SEC submits that the OEB’s determination of the appropriate process for this Application should be driven entirely by the goals of getting all appropriate evidence on the record, having it fully tested in a proper and fair manner, and ensuring that the OEB hears from all stakeholders before making a decision on any material aspect of this case. As the Board always does, it should aim to take no longer than is necessary to reach that point, but it should not take less time than is necessary either.

In addition, we note that Enbridge has proposed a separate process for the budgetary aspects of this Application, not tied to the substance of the DSM Plan itself. This would appear to us to be a non-starter.

It is hard to imagine how the OEB could justify that the rates coming out of such a budgetary approval would be “just and reasonable” if the OEB had deliberately declined to review how the money is to be spent. This amounts to “blank cheque” ratemaking, and would be a marked departure from anything the OEB has done in the past.

This is not like IRM, in which there is as a starting point a detailed review of how money is to be spent, and it is followed by annual adjustments reasonably estimating how much is needed to continue spending on those items in subsequent years. This, instead, would be approval of an envelope with no underlying substance.

SEC therefore submits that the OEB should reject the proposal of the Applicant to separate the approval of \$916 million and rush it through without a) full evidence, discovery, testing, and argument, and b) review of how the money is to be spent.

We recognize that, if Enbridge gets a decision on its budget for 2022 and beyond in November or December, it will have to adapt to that uncertainty. Clearly Enbridge will not “down tools” because the OEB issued its decision inconveniently late for Enbridge’s internal planning. DSM is an important part of their business, and an important regulatory responsibility they bear. Enbridge will have to make business decisions about how to proceed in the face of that uncertainty, but that is the kind of decisions they make all the time, in many other areas of their regulated business.



As well, the OEB can respond to the unfolding timing as it happens. For example, if this proceeding gets to October, and there is doubt whether the Enbridge proposals will survive the process mostly intact, Enbridge may have to come to the Board for guidance at that time. This may involve a short extension of some or all existing programs until the DSM Plan, as amended by the OEB, is approved. It may involve suspending some programs, but allowing continuation of others, until the Board makes a final order. There are a number of ways that the OEB can, in the fall, assist the Applicant in maintaining continuity through the early part of 2022. There is no need to try to deal with that today, and there is certainly no need to throw out the OEB's basic principle of careful consideration of the evidence in order to do so.

In SEC's submission, rushing a \$916 million rate decision is neither an appropriate nor an acceptable response to Enbridge's desire for regulatory certainty.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation

A handwritten signature in black ink, appearing to read "Jay Shepherd", written over a light blue horizontal line.

Jay Shepherd

cc: Ted Doherty, SEC (by email)
Interested Parties (by email)

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application by Enbridge Gas Inc. pursuant to Section 36(1) of the *Ontario Energy Board Act, 1998*, S.O. 1998, for an order or orders approving its Demand Side Management Plan for 2022-2027.

NOTICE OF INTERVENTION

OF THE

SCHOOL ENERGY COALITION

1. The School Energy Coalition (“SEC”) applies for intervenor status in this proceeding.
2. SEC is a frequent intervenor in Board proceedings. Our current Annual Filing can be found on the Board’s website, here:

<http://www.rds.oeb.ca/HPECMWebDrawer/Record/589545/File/document>

3. The School Energy Coalition intends to apply for recovery of its costs reasonably incurred in the course of its intervention in this matter. SEC has participated in many past natural gas and electricity proceedings in Ontario, including consultations, rate cases, and other processes and hearings, and has been found eligible to be paid its reasonably incurred costs in all of those proceedings.

Issues to be Addressed

4. SEC’s intended participation will include the following:
 - a. The successes and failures from the current DSM framework and programs;
 - b. The approach, methodology, and impact of the current methods of measuring the results of the DSM programs, and the cost of the current approach;
 - c. The amounts collected in rates to fund DSM program costs and incentives to the shareholders, and the cost-effectiveness of those amounts;
 - d. The allocation of those costs between various classes of customers;
 - e. Co-ordination of gas conservation with electricity conservation;
 - f. The merger of the former Union Gas and Enbridge Gas Distribution DSM programs into a single program, including but not limited to identification of efficiencies through that consolidation;
 - g. Evolution of DSM best practices in other jurisdictions around the world;

- h. Interaction of gas utility DSM offerings with other government, utility, and private sector offerings and influences, particularly for conservation-sensitive customers like schools;
- i. Such other issues and concerns that may arise in the course of the consultations, or may be identified by the Board for inclusion; and
- j. Generally, to represent the interests of school boards and their students in this process.

The Intervenor's Intended Participation

- 5. SEC intends to participate in any pre-hearing procedures, including interrogatories or technical conferences, and settlement conferences. SEC also intends to participate in any oral hearings of this matter, and in written or oral submissions, as well as any other parts of the process that the Board should order. While SEC does not currently intend to file evidence in this proceeding, it reserves its right to do so depending on the responses to interrogatories and any other discovery processes ordered by the Board.
- 6. SEC also intends to participate in any expedited process ordered by the Board with respect to the Applicant's request for early budget approvals. SEC does not believe it is appropriate to order such an expedited process, but will participate if one is ordered..

Nature of Hearing Requested

- 7. Until interrogatories have been answered, we believe it is premature to assess whether a written or an oral hearing is more appropriate in this proceeding.

Counsel/Representative

- 8. SEC requests that a copy of all documents filed with the Board by each party to this proceeding be served on the intervenor, and on the intervenor's counsel, as follows:

- a. School Energy Coalition: (electronic copies only)

ONTARIO EDUCATION SERVICES CORPORATION
c/o Ontario Public School Boards Association
439 University Avenue, 18th Floor
Toronto, ON
M5G 1Y8

Attn: Ted Doherty, Executive Director
Phone: 416-340-2540
Fax: 416-340-7571
Email: SEC@oesc-cseo.org

- b. SEC's counsel: (electronic copies only)

SHEPHERD RUBENSTEIN PROFESSIONAL CORPORATION
2200 Yonge Street, Suite 1302
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Attn: Jay Shepherd

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With an electronic copy to:

Attn: Mark Rubenstein
Phone: 647-483-0113
Fax: 416-438-3305
Email: mark@shepherdrubenstein.com

Attn: Fred Zheng
Phone: 647-483-0114
Email: fred@shepherdrubenstein.com

Respectfully submitted on behalf of the School Energy Coalition this May 27, 2021.

Jay Shepherd
Counsel for the School Energy Coalition