



BY EMAIL and RESS

Jay Shepherd
jay@shepherd rubenstein.com
Dir. 416-804-2767

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Our File: EB20210072

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

Attn: Christine Long, Registrar & Board Secretary

Dear Ms. Long:

Re: EB-2021-0072 – Enbridge 2019 DSM Clearances – SEC Submissions

We are counsel to the School Energy Coalition (“SEC”). This letter constitutes SEC’s Final Argument with respect to the above-mentioned proceeding, consistent with Procedural Order #1.

Background

The Applicant is seeking to recover an additional \$22.4 million from customers in respect of 2019 DSM programs¹. Of this, \$13.15 million is to be recovered from customers in the former EGD Rate Zone, and \$9.21 million is to be recovered from customers in the former Union Gas Rate Zones².

Further, the \$22.4 million is composed of a) \$12.7 million overspending through the DSMVA, largely on residential programs, b) \$8.8 million in shareholder incentives through the DSMIDA, and c) the remaining just under \$1.0 million in lost revenues through the LRAMVA. The latter, of course, excludes revenue reductions already assumed in rates, and excludes rate classes that already have an average use adjustment, recovering the revenue impact of DSM programs a different way.

¹ An additional 15%, over and above the approximately \$145 million already embedded in rates.

² Exhibit A/3/1, p. 5.

The \$8.8 million in shareholder incentives, and the \$1.0 million in lost revenues, have been audited thoroughly by the EC under the supervision of the EAC and OEB Staff. Counsel for SEC was throughout this time a member of the EAC, and can attest to the thoroughness of that audit.

The \$12.7 million overspending has not been audited or reviewed by any independent person. Further, the only evidence supporting those amounts is the untested assertions by the Applicant in its evidence³. The statement by the Applicant in its DSM Annual Report that *“The intention of the audit is for the EC provide an opinion on whether the claimed ...Demand Side Management Variance Account ha[s] been correctly calculated using reasonable assumptions”* is, to Enbridge’s knowledge, untrue⁴.

Scope and Issues

One of the advantages of the more rigorous evaluation and audit process established by the OEB in the last DSM Framework is that weaknesses in the current DSM programs and their implementation are exposed.

Many EAC meetings devolve into a discussion of technical/policy issues between the three external technical experts with experience in other jurisdictions and sectors (Messrs Kesik, Wirtschaftfer and Neme), the remaining ratepayer representative (Mr. Shepherd) and experts on OEB Staff and at the utility. The utility and the regulator (and the customers, for that matter) all learn from the discussion, but more importantly the issues are brought to the surface.

There is a natural desire to fix the weaknesses as soon as you identify them. The people in the room are all knowledgeable in the field, and are all able to provide constructive input that can help with the problems. However, because the EAC has a specific and well-defined role, it is necessary to be disciplined about the issues, limiting EAC work to evaluation concerns, not program design, framework problems, and the like. As much as the EAC wants to talk about how to shore up program weaknesses and other problems that surface during evaluation, that is simply not practical. The EAC process has a purpose, and must stick to that purpose to be effective.

The same is true in this proceeding. The evidence filed by Enbridge reveals issues with some programs, including issues with their design, implementation and evaluation. It is legitimate to ask, as other parties may do, why relatively poor program performance is resulting in compensation of almost \$10 million in shareholder incentives and lost revenues. It is also legitimate to ask, also as other parties will do, why unsuccessful programs are still being pursued in 2020 and 2021.

SEC has considerable sympathy for these and other similar concerns, but in our view the OEB has a proceeding already established to deal with those concerns: EB-2012-0002 (Enbridge DSM Plan 2022-2027).

This proceeding is to deal with what happened in 2019. There were a set of rules in place for 2019, and in our view if Enbridge and the EC followed those rules, then the results that flow

³ I.SEC.6 and I.PP.2(c) & (d).

⁴ I.SEC.6.

from them are what they are. Unless the rules produced a result that is grossly unfair to customers (or Enbridge, for that matter), and inconsistent with the spirit and intent of the DSM Plan, it is not appropriate to seek to change the results retroactively.

In addition, while the transparency in program design is valuable, this is not a process to review Enbridge's DSM programs. The problems with some existing programs have been revealed here, and certainly Enbridge will have to explain their responses to those problems in subsequent proceedings. If Enbridge continues to chase programs that are not cost-effective, for example, the prudence of those decisions will be in issue, and the Board will know what Enbridge knew in 2019.

But this proceeding is not about reviewing the Enbridge program mix, and the OEB opining on whether changes should be made. The gas DSM structure is one in which the OEB approves a series of principles, and reviews a set of programs, but then mostly leaves it in the hands of the utilities to achieve DSM goals. The next time it is appropriate for the OEB to do a full review of the DSM programs themselves is in the 2022-2027 DSM Plan proceeding.

Live Issues

In SEC's submission, there remain two live issues to be addressed in this proceeding, assuming that the work of the EC and the EAC is not challenged.

1. What should the Board do about \$12.7 million in DSMVA recoveries of overspending that are simply not supported by any verifiable evidence, and rely entirely on untested assertions by the utility?

SEC submits that the DSMVA balances have not been properly supported by evidence, and should not be cleared at this time. The evidence filed in this proceeding does not, in our view, show that the overspending was prudent, and that it in all respects complied with the rules then in place to authorize overspending.

The perfect solution may be for large DSMVA balances to be subject to an independent review similar to the LRAMVA and the DSMIDA. To the extent that the OEB wants to go in that direction, though, in our view that is a subject best dealt with as part of the next DSM Plan and Framework. In the meantime, the OEB has to assess whether it should order customers to pay an additional \$12.7 million with very limited evidentiary support. SEC believes that the OEB should not do so easily.

2. Is the proposed disposition of the subject accounts appropriate?

With respect to the second question, the only outstanding issue is the rate design anomaly in Rate M1 in the Union Gas Rate Zone. Because the Applicant proposes to collect the DVAs in the Union Gas Rate Zone using a volumetric charge, the existing structure of Rate M1 becomes a problem. That rate class lumps together many general service customers, including Residential customers with an average use of 2,000 m³, and schools, businesses and multi-unit buildings with average uses of, in the case of schools, for example, 40,000 m³.

In 2019, Enbridge shifted significant funds from programs for non-residential customers in the Union Gas Rate Zone to programs for residential customers in that Rate Zone. The typical



school pays 20 times as much for those residential programs that cannot benefit schools as the typical residential customer, who is able to access those programs.

The problem is that the proposed disposition is on a volumetric rate rider for all volumes in the class. Higher volume customers, which means usually the non-residential customers, pay a lot more of the cost than the lower volume customers, usually the residential customers, who actually benefit.

The alternative is either a) charge the recovery from Rate M1 on a per customer basis, or b) calculate a rider that only increases the first, or first and second, volumetric rate blocks. Either approach will target the recovery to residential customers, and remove the proposed intra-class subsidy of residential customers by non-residential customers.

SEC therefore submits that the recovery of the DSM balances from the Union Gas customers in Rate M1 should be on the basis of either a fixed charge per customer, or a volumetric charge added only to the first and second rate blocks.

All of which is respectfully submitted.

Yours very truly,

Shepherd Rubenstein Professional Corporation

A handwritten signature in dark 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)