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BY EMAIL and RESS

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Our File: EB20210002

Ontario Energy Board
2300 Yonge Street
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Toronto, Ontario
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Attn: Christine Long, Registrar

Dear Ms. Long:

Re: EB-2021-0002 – Enbridge DSM Plan – Interim Approval

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order #1, this letter constitutes SEC's submissions on Enbridge's proposal for interim approval of its DSM proposals for 2022.

Summary of Position

Our conclusion is that it is inappropriate, and contrary to longstanding OEB practice and regulatory principles, for the OEB to approve proposals of a utility without any substantive review of those proposals. If the requested approval is within the OEB's jurisdiction, as it is here, then the Board likely may not, and certainly should not, dispense with discovery, hearing, and argument and just accept what the utility has proposed, unreviewed and untested.

Analysis

SEC comes to this conclusion by disaggregating the Enbridge request into its two logical component parts:

- Should the Board provide interim approval for continuation of DSM activities by Enbridge in 2022 while this proceeding is still considering the Enbridge DSM Framework and Plan?

- If the answer to the first question is yes, should the interim approval be to continue the existing approved DSM activities, or to implement the Enbridge proposed DSM activities before they have been adjudicated?

Continuation of DSM Activities

With respect to the first question, it is at least arguable that any continuation of DSM activities after December 31, 2021 by Enbridge should be at their risk. If they wanted to continue their DSM programs, it was their responsibility to ensure that they filed an application to approve those programs in a timely manner. If they failed to do so, they are then put to the election of whether to a) suspend those programs, or b) continue those programs despite the risk that they will not ultimately get approval.

That having been said, there are two reasons that the OEB should consider providing interim approval for continuation of DSM activities by Enbridge in 2022:

1. ***Practical.*** It is undoubtedly true that all parties to this proceeding, and all stakeholders, agree that at the current time Enbridge should continue to offer DSM programs in 2022. This is also consistent with government policy. While it is possible that a different approach to gas conservation may be a better approach[1], to the best of SEC's knowledge no-one is currently proposing that Enbridge's responsibility for DSM programs end at the end of this year.

2. ***Technical.*** Offering DSM programs involves spending ratepayer funds. Under the current rate format, the DSM budget is a flow-through. If the OEB does not approve continuation of the DSM programs, then as of January 1, 2022 Enbridge's approved DSM budget is necessarily zero. Any subsequent decision by the Board to allow the DSM programs to continue could not reach back to the beginning of 2022, since that would be retroactive ratemaking. Just as rates have to be declared interim to ensure that the Board has flexibility to make appropriate decisions, so too the DSM budget has to be declared interim for that same flexibility.

While we are cognizant of the fact that PO #2 expressly rules out interim approval of the 2022 DSM budget, SEC believes that inherent in approval of continuation of DSM programs is the authority to continue to spend ratepayer money on those programs.

Our conclusion on the first question, therefore, is that the OEB should provide interim approval for Enbridge to continue to offer DSM programs in 2022, subject to the Board's final decision in this proceeding. Since the approval would be interim, it is equally true that the final decision could affect the period from January 1 until the date of the decision. That would be up to the Board at that time. We would assume the Board is unlikely to declare Enbridge's actions in the interim period, if carried out in good faith, should retroactively be considered to be inappropriate and therefore not recoverable in rates, but that is for the Board to determine at that time.

None of this is particularly controversial.

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[1] For example, an independent agency that does not have the inherent conflict of interest borne by Enbridge in reducing gas use.

Interim Approval of New Proposals

What is unique in this situation is the somewhat surprising suggestion by Enbridge that the OEB should approve not continuation of the existing DSM programs, but implementation of a new DSM Framework and programs that have not been reviewed by the Board.

This is not a theoretical problem. This has real world consequences:

- ***Incenting Increased Gas Use.*** The new proposals include the Low Carbon Transition Program, which incents the use of gas-fired equipment at the expense of more efficient equipment using other energy sources. An approval of this component will allow Enbridge to use DSM funds to increase gas use relative to the alternatives.

- ***First Year Savings.*** The proposed Framework focuses on first year savings, essentially treating short term savings as having the same value as long term savings. If the OEB gives Enbridge the approval it has requested, on January 1st Enbridge will shift the focus of its efforts, and neither the OEB nor anyone else can complain that they did so. This is true even if the OEB ultimately concludes – as it well might based on a full evidentiary record - that this is a very bad idea.

- ***New and Untested Priorities.*** For at least the first 4-6 months of 2022, the utility's DSM spending will be based on the priorities set out in its proposals, rather than either the current priorities in the existing DSM plan, or the priorities the OEB establishes in its decision in this proceeding. In effect, OEB approval as requested by Enbridge would give Enbridge carte blanche to spend perhaps $70-80 million of ratepayer money as Enbridge has determined, without consultation or regulatory review. And, to recover that money from customers in rates.

- ***New Shareholder Incentive/Scorecards.*** Enbridge and its DSM staff will, quite reasonably, chase results and shareholder incentives based on scorecards and an incentive mechanism that are solely of their own making, and have not been reviewed by the Board.

- ***Gross Savings.*** The work of the utility will be targeted, for the first time, at an incentive that rewards them for gross savings (i.e. savings that were not the result of their efforts) rather than net savings. While this can in some circumstances be a good approach, in our submission it is not something that the OEB should implement without a thorough debate.

- ***Program Design.*** The design of new programs, and changes to existing programs, will be implemented despite likely flaws in those designs. The discovery and adjudication process in this proceeding is intended in part to give visibility to those new and changed programs. Usually they get better as a result of the process. Enbridge is proposing that they launch right into them without that transparency.

It is, of course, likely that the new DSM Plan, as approved by the Board in this proceeding, will include significant improvements over the 2015-2021 DSM Plan. Some of those improvements will arise directly from proposals by Enbridge. If we knew today which changes are improvements, we would be eager to implement them as soon as possible.

But that is what this proceeding is all about. This is the opportunity for the OEB to receive evidence and input, and to make determinations about which components of the proposed Plan are improvements, which are not, and what modifications should be implemented to achieve the goals of the utility's billion dollar DSM activities and maximize the benefit for customers.

Conclusion

SEC believes strongly that the OEB should rarely (perhaps "never", in fact) approve, even on an interim basis, new proposals from regulated utilities without a) assembling a comprehensive evidentiary record, and b) hearing from all affected parties. The OEB does not rubber stamp utility proposals to spend ratepayer money, and it should not start now.

SEC therefore submits that the OEB should allow the Applicant Enbridge to continue its existing programs on an interim basis until such time as there is a final decision in this proceeding. In that final decision, the OEB should implement appropriate transition rules that reflect what the utility has done in the interim period, the length of that period, and the extent of the changes the Board has approved between the 2015-2021 DSM Plan and the new 2022-2027 DSM Plan.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation

Jay Shepherd

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