



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 – Issues List Reply

We are counsel to the School Energy Coalition (“SEC”). Pursuant to Procedural Order #2, this letter constitutes SEC’s reply submissions on the proposed Issues List for this proceeding.

Responses to Submissions Other than Enbridge

SEC has reviewed the Issues List comments of all parties. In our view, all of the proposed drafting changes from all parties other than Enbridge are already subsumed within the draft Issues List. In the event that the Board does not agree that any individual change is included, SEC submits that it would be appropriate for the Board to add one or more issues to include those proposed changes.

We particularly wish to comment on the additional issue proposed by OGVG. While we agree with them that it is likely already included under 8(c), SEC shares OGVG’s concern that a disproportionate amount of the past Enbridge and Union programming may have been “order taking” from repeat participants, with insufficient outreach to new participants.

Consistent with SEC’s view that new thinking is required to ensure that DSM programs continue to produce results, SEC agrees with OGVG that it is important to increase the

emphasis on new program participants. If that requires a clarification in the Issues List, we believe that would be appropriate.

Enbridge Submissions

The consistent theme of the Enbridge submission is an attempt to narrow the scope of this proceeding, and prohibit any new thinking or fundamental improvements to the 2022-2027 DSM Plan.

Tactically, of course, the best way for Enbridge to ensure that its DSM Plan ends up being exactly what it has proposed is to scope out any challenges to that Plan. This appears to have two underlying premises:

- a) Because the Board concluded the DSM Framework discussion, the DSM Framework going forward should implement the status quo, subject only to changes proposed by Enbridge, but no-one else.
- b) Any significant changes to the 2022-2027 DSM Plan will require a major rewrite by Enbridge, and will thus endanger or delay the utility's ability to deliver improved programs in 2022 and beyond.

SEC rejects both of those assumptions. We believe fundamental changes and creative improvements are essential, and the time is now. Status quo is, in our view, not a reasonable result.

The following are our specific responses to certain of the submissions from Enbridge.

SEC notes that Enbridge has actually proposed a completely new Issues List, with many nuanced changes implicit in their altered wording. We have not commented on every word of their alternative list. SEC believes that the Board's draft Issues List is for the most part appropriate. Re-inventing that wheel is not necessary, and we don't believe that the drafters at Enbridge are inherently better than the drafters at the OEB.

We have specific comments on some of the propositions put forward by Enbridge in their submissions.

1. **2022 Program Year.** Enbridge says:

"[T]he Issues List should not include any reconsideration of that portion of the program year which is the subject of the interim decision of the OEB. More specifically, the operation of program offerings and the expenditures on same, i.e. the costs incurred for the period prior to the issuance of a final decision of the OEB and an appropriate winddown period thereafter, if necessary, should not be the subject of interrogatories nor argument...[T]he Company's operation of its portfolio of programs pursuant to the interim decision should not be the subject of challenge and all reasonable costs incurred should be recoverable."

As SEC has noted in our submissions on interim approval, we believe that interim approval should likely include assurance that reasonable spending during the interim period will be recoverable. What Enbridge is proposing now goes beyond that. This

would absolve them of responsibility for any decisions made during the interim period. SEC does not agree. Just as is the case with 2020 and other years in the past plan, the utility has the responsibility to implement DSM prudently and effectively, and to make the best decisions on a day to day basis. Subject of course to the Board's decision on interim approval, parties should be free to ask questions about this interim period, and to challenge the appropriateness of imprudent decisions made by Enbridge during that period,

2. **Transition and Implementation.** Enbridge says:

"The Company notes that the current draft issues list does not include as an issue matters relating to Transition and Implementation. These are clearly issues that need to be added as an issue to the list."

SEC agrees, although we assume that the main decision related to Transition and Implementation will be in the Board's ruling on interim approval. However, whether the determination of the issue is in a preliminary ruling, or is also in part in the Board's final decision, transition and implementation are key aspects of any DSM Plan.

3. **DSM Framework.** Enbridge says:

"[T]he Issues List should not indicate that this Application will undertake an extensive review of DSM framework elements and approaches undertaken in numerous jurisdictions across North America... [A] broad comparison of multiple DSM regimes and "DSM best practices" should be outside the scope of this proceeding."

The underlying premise here is that the Board will *a priori* exclude any analysis of material improvements to the structure and approach of the DSM Plan. A review of the methods used in other jurisdictions to deal with DSM problems and issues that we also have in Ontario is to be treated as out of scope.

Enbridge goes on to say that review of better approaches in other jurisdictions:

"...invites parties to argue that the previously OEB stated principles and foundational concepts upon which this Application is premised should be challenged and a different regime put into place. This could inevitably lead to the withdrawal of the current Application and the need to generate a totally new application many months down the road."

Thus, Enbridge is directly proposing that only the status quo – the “concepts upon which this Application is premised” - is acceptable for the next six years of DSM programming¹. Further, in the event that status quo is not set in stone as proposed, there is an implicit threat that Enbridge will have to entirely rethink their DSM Plan. This is a shockingly short-sighted approach, explicitly rejecting the idea of continuous improvement (see below) and proposing that the Board accept business as usual as good enough.

¹ Except, presumably, where Enbridge has proposed changes to the status quo.

SEC does not accept business as usual as good enough, and we believe the Board should reject that premise clearly and expressly.

And, if the proposed DSM Plan is so rooted in the past that a full rewrite is required in order to bring it into the future, then Enbridge should simply withdraw it now and propose a plan that meets the expectations of its customers. Hopefully that is not the case, but SEC does not see the Applicant's "my way or the highway" approach to this process as being helpful.

Enbridge goes on to say:

"Stated differently, if it is the OEB's intent to evaluate and consider in detail DSM regimes in multiple jurisdictions for the purposes of possibly materially amending the DSM Framework proposed by the Company and, as a result, the DSM plan which has been filed, such issues need to be determined as a preliminary matter."

This can be put a different way. "When you, OEB, terminated the DSM Framework consultation, you implicitly adopted the status quo. Now, no changes can be allowed to that status quo (other than those Enbridge proposes) unless the DSM Framework consultation is effectively re-started as a phase one of this proceeding."

The tactical assumption by Enbridge is that either

- a) The Board will not want further delay, in which case it will be forced to accept a status quo DSM Framework, or
- b) The Board will consider changes to the Framework before discovery, and before evidence from anyone other than Enbridge, both of which limit the ability to make any fundamental changes to the Enbridge proposals.

SEC submits that the Board should reject both of these options. The DSM Framework is the conceptual basis for the DSM Plan, but there is no reason it has to be a separate process. Concepts and fundamental changes can be addressed as part of the consideration of the DSM Plan. Indeed, while in past DSM Plan proceedings there has been a framework already in place, those proceedings still considered material changes to the components of the Plan, and those were not always consistent with the framework. The Plan had to change because the Board saw a better way.

4. **Best Practices.** Enbridge says:

"... 'DSM best practices' should be outside the scope of this proceeding. Part of the problem of course is that there is no accepted definition of "best practice" which in many cases can be attributed to local economic and geographic considerations. Different parties have different ideas about what is a DSM best practice."

Applicants before the OEB often resist comparisons to other utilities and the costs and programs of others, for obvious reasons. The Applicants don't always look good in those comparisons. The OEB, on the other hand, has used comparisons (and its cousin, benchmarking) extensively in understanding what it should determine is in the

public interest. This stands to reason. How can you determine if a utility proposal is optimal if you have no frame of reference or point of comparison?

Enbridge's rejection of any "best practices" analysis is simply inappropriate, and is contrary to good regulatory practices long adopted by the Board.

5. **Amortization of DSM Program Costs.** Enbridge says:

"The Company submits this is a preliminary matter which needs to be determined before undertaking an exhaustive review of the Application which could prove fruitless in the event that the OEB determines that the amortization of the DSM costs is in the public interest."

SEC submits that this is an attempt, through procedural means, to prevent parties from raising the issue of amortization of program costs. By raising the spectre of delay, Enbridge is inviting the Board to exclude this from the outset (or limit discovery and evidence on this issue).

SEC may well end up taking the view that program costs should not be amortized. However, we agree with other parties that this is an issue that should be considered in a thorough and thoughtful way before the Board makes a decision.

We also note that Enbridge has not proposed to segregate the amortization question, but to shift all "cost recovery" issues to preliminary matters. This could have the effect of preventing SEC and others of raising concerns about how DSM costs are allocated between and within rate classes².

6. **DSM Program Performance Improvements.** Enbridge says:

"The language at the end of issue 7a [result in annual targets that will ensure progressively greater performance] has been removed as this should be a topic of discussion not a previously determined set objective."

SEC agrees that, if Enbridge is opposed to a "performance improvements" goal, or does not believe that targets should be set to achieve performance improvements, then this should be an issue in this proceeding. If that is the case, then an express issue relating to continuous improvement should be added to the Issues List.

SEC suggests the following wording:

Should the DSM Plan be designed and implemented with a goal of improved performance year over year throughout the Plan? If so, a) how should improved performance be measured, and b) what should be the consequences if Enbridge fails to achieved improved performance, including how should programs, targets, budgets, incentives, governance, or other Plan components be adjusted in the event that performance does not improve?

² In this regard, SEC notes that on page 10 and 11 of their submission, Enbridge proposes an alternate wording of Issue 5. The alternate wording doesn't work, because the part dealing with budgets cannot get to rate impacts unless cost recovery is considered, and the part dealing with cost recovery cannot get to rate impacts unless budgets are considered. Rate impacts only arise when you have both the amount to be collected from customers, and the details of how it will be collected.

7. ***Optimal Suite of Programs.*** With respect to Issue 8, Enbridge proposes a new wording that removes the question of whether the DSM Plan contains “an optimal suite of program offerings”.

SEC believes this change is inappropriate. The Enbridge wording implies that the test is whether the Enbridge proposal is “good enough”, In our view, that the should not be the test. When a utility wants to spend a billion dollars of ratepayer money, the test should be “optimal”, not “good enough”.

Conclusion

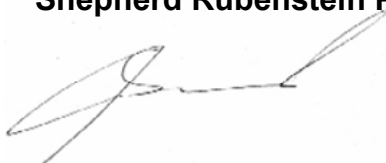
SEC has asked for clarification that certain concerns we have are included in the Board’s draft Issues List, and that request has not been changed after reading the submissions of other parties.

On the attempts by Enbridge to narrow the scope of this proceeding, and in effect force the OEB and the parties to accept the Enbridge proposal without any significant changes, SEC submits that the Board should reject those attempts. DSM is an important activity. Blind acceptance of the status quo is simply not OK. The customers deserve more than that, both from the utility and from the regulator.

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)