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BY EMAIL and RESS

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Our File: EB20210148

Ontario Energy Board
2300 Yonge Street
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Toronto, Ontario
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Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2021-0148 – Enbridge 2022 ICM – SEC Submissions

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order #2, this letter constitutes SEC's Final Argument in this proceeding.

Summary of SEC Submissions

1. The St. Laurent ICM is premature, as the Applicant has not demonstrated that it can be brought into service in 2022 in a prudent manner. The OEB should not approve ICM treatment for 2022.

2. The ICM threshold for the Legacy EGD rate zone should be reduced, resulting in any approval of Cherry to Bathurst being for a lesser amount.

3. Kirkland Lake should not be approved, as it is more than 50% covered by expected incremental revenues.

4. Dawn-Cuthbert appears to be an accumulation of more than one project, and one or both of them would be below the $10 million materiality threshold. In addition, it is part of a normal annual capital program. Therefore, this project should not be approved.

5. Byron Transmission – no submissions.

St. Laurent

The St. Laurent project is a major pipeline replacement in the City of Ottawa, serving not only significant customers in Ottawa, but also supplying gas to Enbridge affiliate Gazifiere in Quebec. It is under active debate in EB-2020-0293, the related leave to construct proceeding.

The original schedule for St. Laurent projected that it would be finished in twelve months[1], starting in August 2021 and ending in September 2022. Then it was put in abeyance, and when Enbridge refiled their evidence in September, 2021 the new forecast is nine months[2], starting in March 2022 and ending in December 2022. This assumed that Leave to Construct is granted in February, 2022.

Procedural Order #5 in the LTC proceeding has the Reply Submissions filed April 4, 2022, assuming no further changes to the schedule[3]. Under normal circumstances, therefore, if leave to construct is ultimately granted[4], it is unlikely to be before June, meaning that the Applicant cannot start this $86 million project until July, and would have to complete it in five months in order to maintain a 2022 in service date.

At the Technical Conference in the LTC proceeding, Enbridge witnesses insisted that the project would still be in-service by December 2022, but gave no reason why they would still try to complete it in that compressed time frame[5] (except that they want to do it as fast as possible). Enbridge stated that they would simply add crews and still meet the same in-service date. There is an outstanding undertaking to provide documentation on their plan to achieve that.

When asked about cost, the witnesses said that there is a 30% contingency in the budget. SEC notes that it is unusual to consider using a contingency to fund a discretionary decision to get a project done in a compressed time frame when there is no external deadline (except the calculation of rate base). Normal practice would be that, if you decide to do a project faster, you re-do the project budget, and retain your 30% contingency for the many uncertainties that caused it to be there in the first place. It is not normal practice to say that you don't need to forecast an increase in costs known in advance of the project, because you have a contingency.

SEC submits that:

a) There is no reasonable likelihood at this point that this project will be completed by December 2022, even if the OEB does give leave to construct.

b) No legitimate reason has been given to rush to complete this project by December 2022. The primary reason for the project – integrity concerns – is based on a forecast that, in the next ten years, this pipe will have 0.3 corrosion leaks. This does not demonstrate urgency.

c) Even if Enbridge was able to complete the project by December 2022, that would only be at an increased cost that is not prudent, and so should not be approved by the OEB. SEC notes that the increased cost is not on the record in this or any other proceeding.

SEC is aware that OEB Staff will propose that the OEB approve ICM treatment for this project, conditional on the granting of leave to construct. In our submission, this would implicitly be approval by the OEB of imprudently rushing completion of this project without appropriate justification.

In our submission, the appropriate response by the OEB to this ICM project is to decline to approve it in 2022, on the basis that it likely cannot be completed this year, the incremental costs of the

[1] Enbridge March 2, 2021 Application in EB-2020-0293, Ex. D/1/1, p. 9.
[2] Enbridge September 10, 2021 Application in EB-2020-0293, Ex. D/1/1, p. 9.
[3] SEC notes that there were many refusals in a relatively contentious Technical Conference on March 4th, so there remains the potential that the proceeding will be further delayed by motions and other procedural steps. We have not assumed that.
[4] Many parties will be arguing that it should not be granted.
[5] There is no cite for this, as the Technical Conference is still going on as this Final Argument is being written.

speeded-up project have not been disclosed or justified by Enbridge, and in any case there is no reason to rush it to squeeze it into this year.

In this regard, we should be clear that we are not proposing that the OEB deny ICM approval, which would imply that it does not qualify. Rather, we are proposing that the OEB conclude that prudent completion of this project cannot be done this year, and therefore no 2022 ICM is applicable. If LTC approval is granted, and it is completed in 2023, the Applicant would be free to apply for ICM treatment in 2023.

Capital Plan and Eligible ICM Envelope – Cherry to Bathurst

The remaining project in the Legacy EGD rate zone is Cherry to Bathurst. SEC has no submissions on that specific project, but does have submissions on the amount that should qualify for ICM treatment.

Enbridge has filed a comparison of their capital spending in the EGD rate zone for 2017-2021 vs. 2022-2026[6]. It shows a plan to increase average capital spending by 48.7% from one period to the next, an 8.3% per year compound annual growth rate. The increase is loaded mostly into 2022 and 2023. This will undoubtedly be a major issue in their upcoming rebasing proceeding.

Line No.	Category	**2017 Actual**	**2018 Actual**	**2019 Actual**	**2020 Actual**	**2021 Forecast**
		(a)	(b)	(c)	(d)	(e)
1	General Plant	48.1	47.3	70.4	51.3	80.2
2	System Access	109.3	108.9	151.1	70.5	192.8
3	System Renewal	102.2	92.3	110.4	233.6	223.0
4	System Service	20.2	22.9	23.9	20.8	34.5
5	Total Overhead	148.1	140.2	151.6	149.1	-
6	**Total - EGD Rate Zone**	**427.8**	**411.6**	**507.4**	**525.2**	**530.5**

Line No.	Category	**2022 Budget**	**2023 Budget**	**2024 Budget**	**2025 Budget**	**2026 Budget**
		(f)	(g)	(h)	(i)	(j)
1	General Plant	81.0	141.7	92.1	99.0	125.5
2	System Access	151.9	169.5	201.0	168.1	173.6
3	System Renewal	465.3	460.5	313.6	288.3	342.0
4	System Service	36.1	42.0	68.5	107.4	45.4
5	Total Overhead	-	-	-	-	-
6	**Total - EGD Rate Zone**	**734.3**	**813.7**	**675.2**	**662.8**	**686.6**

[6] Ex. B/2/1, p. 5.

SEC notes that this table of spending is not comparable on a category by category basis, because the historical actuals separate out capitalized overheads, while the forecast data includes those overheads in each line item. Therefore, it is not possible to compare, for example, the increase in System Renewal costs, or the increase in General Plant, although both are clearly very high.

However, it is clear that the proposed increase in average annual capital spending, from $480.6 million to $714.5 million, is very high. This is important in this Application because it is the amount by which that capital budget exceeds the ICM threshold that establishes initial ICM eligibility of the expenditures. In short, if Enbridge did not ramp up its budgets as much as it did, it would not qualify for the level of ICM spending in the EGD rate zone that it is claiming.

The structure of the ICM application process does not present an opportunity for a thorough review of the justification for all capital spending increases proposed. That is generally left to a cost of service proceeding. Therefore, although it is at least arguable that the entire increase in capital spending in excess of inflation should be considered excessive (or at least inappropriate pacing), the evidentiary record in this proceeding is probably insufficient for that discussion.

However, it is clear that, as OEB Staff points out in their Final Argument, Enbridge in an update to their Asset Management Plan has proposed a $20.3 million increase in General Plant capital expenditures in 2022. There is no legitimate justification for this sudden jump in General Plant in 2022 (and 2023) relative to the average of past years.

SEC therefore submits that, at the very least, the capital budget[7] for 2022 should be reduced by this increase in the General Plant budget. That would result in maximum eligible ICM expenditures being reduced to $192.5 million. Further, if the St. Laurent project is treated as 2023 in-service instead of 2022, maximum eligible ICM expenditures would be $106.5 million, which would be the maximum amount of the $126.7 Cherry to Bathurst budget that could be claimed for ICM purposes.

As noted above, SEC makes no submissions on whether the Cherry to Bathurst project should be granted ICM treatment at all. If the OEB does allow ICM recovery, it is submitted that the cost to be included should be no more than $106.5 million.

Kirkland Lake

Enbridge has filed an update to its evidence[8], showing that this project is expected to generate incremental revenues from a single customer over the two year ICM recovery period of more than 50% of the revenue requirement in those years[9]. Further, SEC notes that the total net revenue requirement over those two years is $612,000, which is insignificant relative to the revenues of Enbridge.

SEC therefore submits that ICM treatment is not appropriate for the Kirkland Lake project.

Dawn to Cuthbert

This appears to be at least two projects, maybe more. One project is the replacement of only 650 meters of (admittedly large) NPS 42 pipe. This, to SEC, should be considered part of a typical annual capital program, and not of sufficiently different character that it cannot be managed within the overall capital envelope.

[7] And, by implication, the in-service additions.
[8] Ex. 1.ADR Request.1.
[9] Ex. B/2/1, p. 31 (Table 12).

The second project is a discretionary upgrade to add ILI equipment on a different section of the Dawn Cuthbert pipe. It is not clear to SEC how this project is related to the replacement project. In addition, it is not clear that adding ILI equipment is the kind of major capital activity, distinct from normal annual capital improvements to the system, for which the ICM approach is intended by the OEB.

The evidence does not disclose the cost of each of the two projects, but it is the obligation of the Applicant to demonstrate that each discrete project exceeds the minimum $10 million threshold. They have not done so, and in our view this ICM claim fails as a result. In addition, both of the sub-projects appear to be typical annual capital, and thus not eligible.

SEC therefore submits that the OEB should reject this claim for ICM funding.

Byron Transmission

SEC is concerned with projects such as this that should be part of the routine annual capital programs of Enbridge. We are not able to discern how this is different from the many other typical capital projects that Enbridge will carry out in 2022.

Subject to that comment, SEC has no submissions on this project.

All of which is respectfully submitted.

Yours very truly,

Shepherd Rubenstein P.C.

Jay Shepherd

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