



BY EMAIL and RESS

Mark Rubenstein
mark@shepherdrubenstein.com
Dir. 647-483-0113

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

January 16, 2023
Our File: EB20220200

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2022-0200 – Enbridge 2024-2028 – Draft Issues List

We are counsel to the School Energy Coalition (“SEC”). Pursuant to Procedural Order No. 1, these are SEC’s submissions on the contested draft issues 46 and 47.

Issue 46

SEC disagrees with Enbridge’s proposal to exclude issue 46 from the final issues list.

We understand the basis of Enbridge’s request to be that in its view the allocation between utility and non-utility storage set out in the NGEIR decision¹ is permanent. Enbridge plans to point to language in the OEB’s Decision on the Motion to Review of NGEIR (EB-2016-0322/0340) that references a permanent allocation between utility and non-utility storage.²

SEC submits the comments in the NGEIR reviewing panel’s decision need to be considered in their proper context. The reviewing panel was responding to arguments from the moving parties that in-franchise customers should have a right to cost-based storage, regardless of the forbearance findings, if the space was needed. The reviewing panel was not saying, nor could it as a legal matter say, that the allocation was permanent and could not be reconsidered or reviewed by the OEB in the future. It was saying that, at the time, the amount was intended to be fixed.

It is trite law that a panel of the OEB cannot bind future panels. It is always open to the OEB to reconsider issues when circumstances change, like here in the first rebasing application after the amalgamation of the two major Ontario gas distributors.

In the Enbridge/Union MAADs Decision (EB-2017-306/307), the OEB found that the issues raised with respect to the review of the NGEIR were outside the scope of that proceeding, but commented that “considerable hearing time was devoted to these important issues”, and so it included a summary in

¹ [*Decision with Reasons \(EB-2005-0551\), November 7, 2016*](#)

² [*Decision with Reasons \(EB-2006-0322/0340\), July 30, 2007*](#), p.7

an appendix.³ Presumably, the OEB expected that the issues would be in scope, and considered, in the first rebasing application after the merger. What the OEB never determined in the MAADs decision, was that that not only was it out of scope in that proceeding, but it would be out of scope for any other future proceeding as a result of NGEIR.

It may ultimately be inappropriate to make any changes to the existing 199.4 PJ of cost-based storage available for in-franchise customers. At this stage in the proceeding, the issue is in-scope and should be included in the final issues list as originally proposed by the Board in Procedural Order No. 1.

Issue 47

Enbridge proposes to modify the wording of this issue, which would significantly reduce the scope of the issue from that of the appropriateness of Enbridge purchasing storage for in-franchise customers at market-based rates from itself to only the much narrower issue of the appropriateness of its proposed procurement process when it makes such a purchase (e.g. through a blind RFP).⁴

SEC submits the wording of the issue should remain as originally drafted. It is inherently tied to draft issue 46 and should not be unduly narrowed as proposed.

Insufficiency of the Evidence

SEC does note that Enbridge has not filed much, if any, evidence related to the appropriateness of the 199.4 PJ of in-franchise utility storage (Issue 46), or the appropriateness of Enbridge purchasing storage from itself at market rates (Issue 47). If the issues as drafted are included on the final issues list, we urge the OEB to require Enbridge to file supplementary evidence before the commencement of Phase 2 of the proceeding, so that a more fulsome examination can occur.

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

cc: Brian McKay, SEC (by email)
Applicant and Intervenors (by email)

³ [*Decision and Order \(EB-2018-0306/307\)*, August 30, 2018](#), p.48

⁴ See Exhibit 4, Tab 2, Schedule 1, para. 47