Shepherd Rubenstein

BY EMAIL and RESS

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Our File: EB20230326

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2023-0326 – Enbridge 2021 Vector Contract Decision – SEC Submission

We are counsel to the School Energy Coalition ("SEC"). Pursuant to the *Notice of Hearing and Procedural Order No.* 1, these are SEC's submissions on the Ontario Energy Board's ("OEB") hearing on its own motion to determine the prudence of certain transportation contracts that Enbridge Gas Inc. ("Enbridge") entered into with Vector Pipeline ("Vector") in 2021.

SEC has had an opportunity to review a draft of the submissions of the Federation of Rental Housing Providers ("FRPO"). FRPO has put forward an important perspective that raises some doubt about the prudence of the contracts at issue and the associated cost consequences.

At the same time, SEC recognizes Enbridge's contention that one of the benefits of the contracts is that they would otherwise reduce the need for additional infrastructure facilities between Sarnia and Dawn. As Enbridge notes, this "could be looked at as a supply-side IRPA."[1] SEC agrees that this is an important and relevant consideration for the OEB that should be part of its assessment. The problem from SEC's perspective is that we are unable to find any specific evidentiary reference from a previous proceeding or gas supply review that discusses with any detail the required infrastructure that would be added to its Sarnia Industrial Line. This makes it impossible to assess the potential avoided costs so that it can be balanced against the premium price that may have been paid for the incremental capacity. We ask Enbridge to address this in its Reply Argument.

SEC further wishes to briefly comment on the legal test that the OEB is to use to determine prudence. In its Argument-in-Chief, Enbridge relies on the OEB's approach adopted in RP-2002-0032, as confirmed in the appellate decisions arising from that proceeding.[2] Subsequent to those the decisions, the Supreme Court of Canada ("SCC") in *Ontario Energy Board v. Ontario Power Generation Inc.*

[1] Argument-in-Chief, para. 3; EB-2023-0072, I.Staff.2, p.2
[2] Argument-in-Chief, para. 33

expressly rejected the contention that the OEB under the *Ontario Energy Board Act* ("*OEB Act*") was legally bound to apply the test laid out in RP-2002-0032.[3] SCC found that where the statutory scheme only requires the regulator to set "just and reasonable" rates, as in Ontario, "the regulator may make use of a variety of analytical tools in assessing the justness and reasonableness of a utility's proposed rates."[4] The SCC confirmed that this is especially true, as is the case here[5], where the OEB has been given express direction over methodology.[6] Furthermore, any presumption of prudence would be contrary to the *OEB Act*.[7] The burden of proof lies with Enbridge.

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

cc: Brian McKay, SEC (by email)
Enbridge and intervenors (by email)

[3] *Ontario Energy Board v. Ontario Power Generation Inc.*, 2015 SCC 44, para. 102-103
[4] *Ontario Energy Board v. Ontario Power Generation Inc.*, 2015 SCC 44, para. 103
[5] *Ontario Energy Board Act*, section 36(3)
[6] *Ontario Energy Board v. Ontario Power Generation Inc.*, 2015 SCC 44, para. 103
[7] *Ontario Energy Board v. Ontario Power Generation Inc.*, 2015 SCC 44, para. 104; *Ontario Energy Board Act*, section 36(6)