



BY EMAIL and RESS

Mark Rubenstein
mark@shepherd rubenstein.com
Dir. 647-483-0113

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

May 13, 2024
Our File: EB20240111

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2024-0111 – Enbridge 2024-2028 Phase 2 – 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 Draft Issues List. Unless discussed below, SEC does not take issue with any of the additional issues or revised wording proposed by the OEB or Enbridge Gas Inc. (“Enbridge”).

Issue 7

Enbridge proposes that Issue 7 (“How should Enbridge Gas be incentivized to implement economic alternatives to gas infrastructure and how should the recovery of its costs be treated?”) be shifted from ‘Incentive Rate Setting Mechanism’ down to the ‘Other’ category.¹ SEC believes the issue is appropriately placed on the Draft Issues List as it goes to the appropriate IRM mechanism.

Issue 18

Enbridge opposes the inclusion of Issue 18 on the Issues List which asks “[a]re the energy transition safe bet proposals with capital spending in the IRM term appropriate?”. SEC does not endorse Enbridge’s commentary, but does believe it would be helpful for the OEB to provide clarity on what it believes is and is not in-scope in Phase 2 with respect to specific energy transition capital spending under this issue.

2025 Rate Setting Issue

Enbridge proposes a new issue regarding the process for approving 2025 rates.² SEC proposes the following revised wording, which removes Enbridge’s editorial wording and more closely attempts to mirror issue 13 (implementation of Phase 2 Storage issues): “*What is an appropriate process to*

¹ Enbridge Gas Submissions on Issues List, p.5

² Enbridge Gas Submissions on Issues List, p.4

approve 2025 rates ~~as soon as possible~~ after the issuance of the Phase 2 Decision on the IRM issues is complete?"

Enbridge Sustain Issue

SEC supports the inclusion of an issue that would consider the relationship between Enbridge and Enbridge Sustain.

The issues raised by HRAI are relevant to protecting customers by ensuring that rates do not subsidize Enbridge's unregulated business. Furthermore, there is indirect harm as most customers, including schools, rely on HVAC contractors, and any subsidy by Enbridge's regulated business harms the competitive market for these services. Over time this will raise costs for customers who rely on these services. This is especially important in the relatively nascent market for various low carbon energy solutions.

As the OEB is aware, there was no mention in Enbridge's Phase 1 evidence regarding this new major unregulated initiative that the company was undertaking within the regulated utility. If there had been, parties, including SEC, would have most certainly asked questions about it, ensuring that both ratemaking and conduct, particularly as it may relate to cost allocation and any sharing of customer information, are appropriate.³ Fundamentally, the cost allocation issue is no different in type than the proposed issue 12, which examines another allocation of costs between utility and non-utility business (storage).

SEC disagrees with Enbridge that the issues raised by HRAI are not relevant to the Phase 2 issues.⁴ At issue is the appropriate rate-setting approach for the 2025 to 2028 rate years, which could include an adjustment to reflect any required changes to utility/non-utility cost allocation. Enbridge's argument that this is a collateral attack on the Phase 1 Decision and Phase 1 Settlement Agreement is also without merit.⁵ The Phase 1 Decision and Phase 1 Settlement did not approve the 2025 to 2028 rate-setting process. Moreover, Enbridge did not disclose Enbridge Sustain in any of its evidence. At this point all that is being considered is if the issue should be included on the Final Issues List, not the appropriateness of any specific relief.

Enbridge's position is also inconsistent with its own proposed Phase 2 relief. Enbridge has requested, for the first time as part of its Phase 2 evidence, a variance account to capture material incremental OEB costs assessed to Enbridge Gas, as compared to the amount included in rates that were subject to the very same approved settlement.⁶ Clearly, it cannot be out of scope to potentially include an adjustment to 2025 rates for one aspect of the approved 2024 OM&A budget (allocation of costs to Enbridge Sustain), while being in-scope to consider the establishment of a new variance account to adjust another aspect of the same 2024 budget (OEB assessment costs). If anything, the opposite is

³ Even if Enbridge is in compliance with all existing OEB Rules such as the Affiliate Relationship Code for Gas Utilities, which would likely be the subject of any compliance investigation, individual panels have broad discretion and authority to regulate not just rates but its activities. (See [Decision with Reasons \(RP-2001-0032\), December 13, 2002](#), para. 5.11.85)

⁴ Enbridge Gas Submissions on Issues List, p.7

⁵ Enbridge Gas Submissions on Issues List, p.7

⁶ Phase 2 Exhibit 9, Tab 1, Schedule 3, p.5-11



appropriate considering the OEB assessment costs were explicitly considered⁷, while Enbridge Sustain was not even disclosed.

Impact of Enbridge's Motion to Review and Appeal

SEC's submissions on the Draft Issues List are informed by the Phase 1 Decision. As the OEB is aware, Enbridge has raised a wide-ranging challenge to the Phase 1 Decision through both a motion to review and an appeal to the Divisional Court. Insofar as Enbridge is ultimately successful, even in part, there are likely to be cascading impacts for matters that are in-scope for Phase 2. However, because of the outcome of the Phase 1 decision, parties may not be seeking to add to the Issues List. Depending on the timing of these processes, including the motion to review which could be decided while Phase 2 is on-going, flexibility may be required for parties to raise new issues.

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

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

⁷ As part of the approved Phase 1 Partial Settlement Proposal, as part of the settlement of Issue 31, the Parties agreed to Enbridge's proposal to close the existing Union and Enbridge OEB Cost Assessment Accounts (See [EB-2022-0200 Partial Settlement Proposal](#), p.53; Underlying request located at EB-2022-0200, Exhibit 9-1,4, p.6-7 and). See also the disclosure of OEB cost assessments costs in 2024 budget as part of Interrogatory Response 4.4-Staff-117 b)