Shepherd Rubenstein

By EMAIL and RESS

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Our File: EB 2024-0198

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2024-0198 – Enbridge DSM Plan – Issues List

We are counsel for the School Energy Coalition (SEC). This letter is sent pursuant to Procedural Order #1 to provide our reply submissions on the Issues List.

Enbridge Editorial Changes

The Applicant has proposed a number of wording changes, specifically to Issues 1, 6, 8, 11(e), 12, 12(b), and 13.

With respect to Issue 1, we are unclear whether the proposal is that the Commissioners should not consider "intergrated planning", or they should, but under a different heading. Given that integrated planning is best practices, and is a specific goal of the Ministry and of the OEB, in our view the Commissioners should make clear that integrated planning is and will be an important part of their assessment of the proposed plan. Whether the wording of the issue is changed or not, the underlying principle of integrated planning should be retained.

With respect to the other wording changes, none of them appear to SEC to be necessary, but neither would implementing those changes be problematic. Historically an OEB Issues List has been for the guidance of the parties, and is not to be parsed with the same rigour as a statute or regulation. As long as the Commissioners view the Issues List, as in the past, as a way to get to the right answer, rather than a way to limit the scope of the discussion unduly, we have no problem with those changes.

Role of the SAG

Enbridge appears to take the position that, because of the existence of the SAG, parties in this proceeding may not raise policy issues, even if they are implied by the proposals being made by the Applicant.

This seems to be a continuation of the frontal attack from Enbridge on intervenors, which the Commissioners have already seen, and to which they have responded. Enbridge appears to be taking every possible step to limit discussion on this Application, which involves approval to spend about $1.8 billion of ratepayer money.

SEC's view is that the SAG was in no way intended to displace the role of the OEB Commissioners in considering proposals to spend ratepayer money, nor the important role of the public (including the intervenors) in testing those proposals. Further, the SAG was not intended to move the consideration of the Applicant's proposals from the transparency of a public hearing to closed door meetings of a limited number of experts with the utility, with sparse public disclosure.

The Applicant seeks approval to spend a lot of ratepayer money. In SEC's view, the role of the Commissioners is to get the right answer on that spending. If doing so requires that policy issues be considered, then the Commissioners cannot, and should not, turn a blind eye to those issues just because the Applicant would rather avoid a public discussion.

Sole Sourcing the DSM Plan

In their submissions, the Applicant appears to take the position that the Commissioners are not allowed to consider whether all or any part of the DSM programs should be delivered by persons other than Enbridge. Indeed, they say specifically:

> *"Allowing any party to question the ability of Enbridge Gas to undertake and fund DSM activities runs directly counter to the Minister's direction."*

This would amount to Enbridge having the right to be the sole entity delivering DSM programs to gas customers in Ontario, and all ratepayers being prohibited from questioning that right. If the Commissioners were to accept this argument, in our view it is incumbent upon them (and Enbridge) to cite a specific legislative or regulatory requirement that limits the OEB's jurisdiction in that way, and limits the ability of stakeholders to express their views.

To the best of our knowledge, there is no such requirement.

This is important because the Applicant's position implies that the Commissioners have no power to deny approval of this Application. They can presumably order modifications, but the Commissioners are, says Enbridge, obligated to approve spending by Enbridge of some amount of ratepayer money on DSM programs. There is no jurisdiction to say no.

Presumably, this also means that, for any given program or offering, the Commissioners cannot deny approval, since each program and offering is, in effect, a request for approval to spend money on DSM for a particular target market. Denial of approval is, says the Applicant, not an option.

The *reductio ad absurdum* is perhaps a strong way of putting it, but the reason SEC takes this approach is that the Applicant is using a similar (and fallacious, in their case) argument in seeking to prevent discussion on this issue. The Applicant, faced with questions about whether $1.8 billion of spending should be sole sourced to them, seeks to turn that issue around by taking the position that they have the absolute right to be the only DSM program administrator in Ontario.

This is not, they say, about sole sourcing. This is about taking away a right they already have.

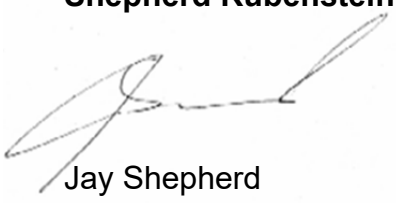
SEC re-iterates our submissions on March 7th on this point. The OEB should find the best way to spend money to achieve DSM objectives. If the best way is not Enbridge, then the OEB should not take money from ratepayers and give it to Enbridge for this purpose.

Sur-Reply

It is our expectation that the Applicant will seek to file a reply to these submissions, despite the fact that the Procedural Order does not allow for an additional reply. SEC believes that, if such additional submissions are filed, they should be rejected by the Commissioners. Enbridge already has a right of reply in the PO, as does SEC. Both are due today. This letter is ours.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation



Jay Shepherd

cc: Brian McKay, SEC (by email)
Interested Parties (by email)