



By EMAIL and RESS

Jay Shepherd
jay@shepherdrubenstein.com
Dir. 416-804-2767

March 9, 2026
Our File: 20250295

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

Attn: Ritchie Murray, Acting Registrar

Dear Mr. Murray:

Re: EB-2025-0295 – Enbridge 2027-2030 DSM Plan – Issues List

We are counsel for the School Energy Coalition (“SEC”). Pursuant to Procedural Order #1, this letter constitutes SEC’s submissions on the Draft Issues List, and on the appropriateness of including the cost of carbon as an issue in this proceeding.

SEC has met with a number of other intervenors, and is aware that some will be proposing wording changes to certain issues, or new issues driven by technical concerns. We have generally agreed with their proposals, and do not believe that it would be helpful for SEC to provide additional submissions on those wording changes or technical amendments.

We therefore will focus on two items: inclusion in cost-effectiveness calculations of non-energy costs and benefits (including, but not limited to, the value of GHG reductions, i.e. the cost of carbon); and the future role, if any, of the SAG.

SEC counsel will not be able to attend the Issues Conference, due to a prior appointment for a medical procedure. These submissions are therefore our full submissions on the Issues List.

Non-Energy Costs and Benefits

SEC has long supported including non-energy benefits (NEBs) in the calculation of cost-effectiveness of DSM and other efficiency initiatives. In our view, the current 15% adder is quite low, even when the cost of carbon was a separate, federally-mandated charge. We understand that the IESO is currently looking at the quantum of this adder in the context of eDSM, and in our view the OEB should consider co-ordinating its use of this adder with any new IESO approach.

Further, SEC believes that the quantum of the value of carbon should be an issue in this proceeding.

However, Enbridge¹ has challenged the OEB's jurisdiction to include the cost of carbon (and thus, by extension, all non-energy costs and benefits) in its analyses, saying:

“The OEB’s jurisdiction does not extend to regulating the use of, or the downstream effects of using, natural gas. These are powers reserved for the federal and provincial governments. Being an economic regulator established by statute, the OEB’s powers do not permit it to establish a Cost of Carbon for DSM to reflect the societal implications of producing carbon emissions, for reasons tied to the perceived consequences of natural gas use. Such a cost would not reflect directly avoided costs for DSM participants and would instead be designed to reduce natural gas use for reasons *other than* economics and conservation. Screening DSM measures in a manner that targets the implications of using natural gas for environmental and societal reasons would overstep the OEB’s jurisdiction, into the purview of the federal and provincial governments...

Setting and adopting a Cost of Carbon for inclusion in the TRC-Plus test would be inconsistent with the objective of the DSM Framework (i.e., to deliver meaningful savings in natural gas consumption and customer bills, guided by principles that include maximizing cost-effective savings). The effect of artificially inflating the TRCPlus Ratio would be to increase the economic viability of DSM measures towards acceptance for ratepayer funding for DSM programs – a change that is directed at GHG emissions reductions due to climate change concerns, rather than consumption and actual energy bill savings for individual customers.” [emphasis added]

To be clear, SEC does not agree with Enbridge’s position. SEC does not believe that the OEB’s jurisdiction is limited to an accounting exercise in which dollars in and out are netted. The OEB is required to act in the public interest in its policies and decision-making, and the public interest is not just math.

That having been said, if Enbridge were found to be correct, the necessary implication is that any addition to a cost-benefit analysis that is not a direct financial cost would be outside of the OEB’s jurisdiction. Enbridge targets the cost of carbon in their submission, but that is really no different than any other environmental, social, or other non-financial cost or benefit of energy policies and decisions. If there is no jurisdiction to reflect the cost of carbon, there is no jurisdiction to consider any of those other NEBs.

SEC does not believe that it is appropriate for this panel of Commissioners to reach a general conclusion/decision on the OEB’s jurisdiction to consider non-energy costs and benefits, including the cost of carbon. This is an important issue of general application, which should be considered in a separate proceeding in which all interested parties have proper notice, and the ability to be heard. It will affect not just closely related areas, like the IRP Framework and other IRP proceedings, and other conservation related areas, like the BCA Framework, utility NWS proposals, and eDSM policies. It will also affect more distant areas, like facilities applications and potentially even rate applications. The entire DCF+ test would have to be re-thought, as would the TRC+ test. Both include many non-energy and non-financial costs and benefits.

¹ Enbridge 2027-2030 DSM Plan, EB-2025-0295, Ex.C-1-2, at para. 15 and 17

The OEB's jurisdiction to consider issues and factors outside of the direct costs and benefits of utility actions would, if circumscribed, significantly alter the way the OEB approaches its mandate. Looking at the broader public interest implications of its regulation of utilities, and how utilities spend ratepayer dollars, is central to what the OEB does.

SEC therefore believes that the OEB should, as soon as possible, initiate a generic hearing to consider the question of whether considering the non-energy costs and benefits of utility actions or proposed actions is within the jurisdiction of the OEB. In addition to the parties to this proceeding, all regulated entities and all public interest and ratepayer groups with an interest in OEB proceedings should be given notice, as should the Ministry of Energy.

In the meantime, until the matter of the OEB's jurisdiction is resolved, the issue of non-energy costs and benefits, including the value of GHG emission reductions, should remain on the Issues List for discovery purposes. This panel can then determine, once the OEB has resolved the jurisdiction question in a separate proceeding, how to deal with NEB-related evidence in its decision-making.

Role of the SAG

The OEB will be aware that counsel for SEC was a member of the SAG until March 28, 2024, when he resigned because of concerns that the SAG was not able to provide input that was influencing Enbridge, and instead was being used by Enbridge to further its own agenda. A copy of our letter setting out our concerns is attached to these submissions.

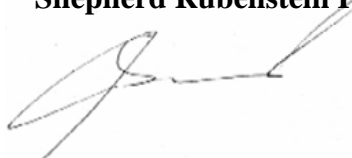
We also note that the last Report of that group appears to be the one dated November 11, 2024. We have not been able to find any information suggesting that the SAG has met since then, or has had any input in the current application. The most recently filed cost claims of participants appear to end with Meeting #25 on November 19, 2024. All meetings after that time are listed as EAC meetings, and appear to deal only with Evaluation and Verification issues.

SEC therefore believes that a new issue should be added to the Issues List as follows:

What is the appropriate role, if any, of the Stakeholder Advisory Group going forward? If the SAG is not to have a continuing role, what body or procedure, if any, should replace it?

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)



By EMAIL and RESS

Jay Shepherd
jay@shepherdrubenstein.com
Dir. 416-804-2767

March 28, 2024
Our File: EB20220295

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

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2022-0295 – DSM Stakeholder Advisory Group - Membership

I am writing this letter as a member of the DSM Stakeholder Advisory Group (“SAG”), established in response to the OEB’s Decision in EB-2021-0002 on November 15, 2022. With regret, I advise that I must resign from membership on the SAG.

In my opinion, the SAG is not meeting the goals intended in the Decision, and after months of trying to add value as originally envisioned by the OEB, I now conclude that continued participation is a waste of my own time and the ratepayers’ money. It could also compromise my representation of longstanding clients in the upcoming proceeding to consider the next Enbridge DSM Plan.

Thus, while I recognize that my leaving the committee means that the SAG will no longer have any members whose primary role is to raise ratepayer concerns, the alternative of continuing on the committee is not an acceptable one.

It is reasonable for the OEB to expect that I provide reasons for these conclusions, so I will provide a brief summary. If further input is sought, I am happy to talk to the OEB about this further.

In my view, the intention of the OEB in establishing the SAG was to create a collaborative process in which experts would be able to provide input to Enbridge to assist in the development of a more ambitious, and more innovative, DSM Plan starting in 2026. Implicit in that would be that Enbridge would be listening to the input, and using the SAG members’ expertise to expand their thinking on DSM. In effect, in creating the SAG the OEB was providing a new, valuable resource that would otherwise

not be available to Enbridge, and could result in a DSM Plan different in both scope and kind from past DSM activities.

Sadly, that is not what has happened.

While I could go on at some length, it may be helpful simply to provide four examples of how the process has gone off the rails.

Achievable Potential Study (APS). More than half of the time spent by the SAG (and various subcommittees) since its first meeting in April, 2023 was spent on retaining and instructing Guidehouse on the APS, which is now not expected to be made public until some time in the summer or fall (after many delays). Further, it appears to be the consensus of all members of the SAG, including Enbridge and OEB Staff, that the APS will be of limited value in the development and then regulatory review of the next DSM Plan. There are many reasons for this, but two stand out. Delays in the study mean that Enbridge has little opportunity to incorporate the results into its plan, even if they wanted to. More important, the study uses the conventional APS approach, but that approach - assuming that the future will be similar to the past - is at least questionable when we are entering an energy transition.

Enbridge Regulatory Strategy. While the Decision contemplates a collaborative process, and Enbridge has constantly reminded the SAG that the goal is to get consensus, the approach from Enbridge is not collaborative. Instead, Enbridge has presented principles and proposals (without any context) to the SAG, and sought to get SAG members to “take a position” on those principles and proposals. As just one example of many, it proposed to the SAG that targets would be set based on exclusion of certain categories of customers, and would be designed so that overall gas use could continue to increase during the next DSM Plan, while targets are still considered to be met. When some SAG members have resisted the Enbridge proposed principles, Enbridge has at all times insisted on their proposals, without any attempt to compromise or reach consensus.

Another example is the repeated statements by Enbridge that any increase in the DSM gas savings will require massive (perhaps as much as an order of magnitude) increases in the annual DSM budgets (see below).

A third example is the concept of “committed carbon” raised by some SAG members as a different way to approach targets, cost recovery, or both. Enbridge has declined to discuss that concept.

Further, when presenting the early discussions of the SAG to intervenors and others, Enbridge has sought to characterize the advice they received from the SAG as being supportive, even though in most cases no consensus was reached, and in all cases it was agreed that SAG members would not be treated as having taken any positions on the Enbridge principles and proposals.

I can only conclude that Enbridge has adopted this approach so that, when we get to the proceeding in which their next DSM Plan is considered by a panel of Commissioners, the experts (who are most of the experts involved in consideration of

their plans normally) will be less able to criticize the Plan. That is, instead of incorporating input from the experts, Enbridge have sought to get the experts to make statements now that can later be used to undermine any critique the experts provide when they are finally able to see the whole Plan.

Plan Components. We have not yet seen any of the components of the next plan, nor have we discussed what programs or offerings would be appropriate, at least not in any meaningful way. This is despite the fact that a plan is expected to be filed less than six months from now. (This alone demonstrates how little input the SAG has and will have into the next DSM Plan.)

What we can glean so far includes the following:

- No significant new offerings are going to be proposed. No innovative approaches have been discussed or proposed, and the new programs are likely to be the same as the old ones, only a lot bigger. It is not apparent that Enbridge is planning to change anything or, if they are, they have not yet disclosed any material changes to the SAG.
- The budget figures that have been implied so far (Enbridge notes that they have not proposed any budgets as yet, but a number of figures have been thrown around) suggest that a DSM Plan that spends a billion dollars a year is being contemplated. This would result in a rate increase of more than 10%, just to increase DSM programs in order to achieve savings of 1% of throughput, while overall throughput continues to increase. When asked to look at this from the point of view of the ratepayers (i.e. as a rate increase issue, rather than a DSM budget issue), they appeared to not understand the difference, and they were surprised that ratepayers have responded negatively to that level of potential increases. In fact, an Enbridge representative said to SAG members today (this is a direct quote) “Do I understand correctly that a billion dollars a year is too much, but half a billion a year would be OK?” SAG members responded that it is not reasonable to talk about budget until you have a plan and targets that the proposed budget is supposed to fund. You don’t express opinions or make decisions on spending ratepayer funds without context.
- Although the Decision directs Enbridge to explore joint delivery of programs with IESO, SAG members have learned that Enbridge is still in preliminary discussions with IESO on this. No proposals for joint delivery have been presented to the SAG, so at this point it is unlikely that the next Plan will have significant joint programs.

Potential Conflicts of Interest. When an intervenor meeting was announced for this week, SAG members were invited to attend. At that point, the suggestion was made to me that I might not be able to attend the meeting on behalf of my client, School Energy Coalition, because I am a member of the SAG.

This is not an acceptable situation, In the result I was allowed to be listed as attending in both capacities, and it didn’t matter in any case. However, obviously there are at



least some people at Enbridge and/or the OEB that believe that SAG membership may limit the scope of future regulatory involvement by those individuals. This was not expressed at the outset, and it is not consistent with my duties to my clients.

In saying all of the above, I want to be clear that OEB Staff is trying to keep the process constructive, so that it can add value. However, it is difficult for them to do so in the face of Enbridge unilaterally determining what subjects they want to bring to the SAG for "input", and what limited information will be provided to the SAG, and the overall timing of the process. (I have discussed this letter with OEB staff, so that it will not be a surprise to them.)

Given all of the above, please accept this letter as my resignation from the SAG, effective immediately.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation

A handwritten signature in black ink, appearing to read "Jay Shepherd", written over a faint, light-colored signature line.

Jay Shepherd

cc: Brian McKay, SEC
Josh Wasylyk, OEB
SAG Members
Interested Parties