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**By EMAIL and RESS**

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Our File: 20250295

Ontario Energy Board
2300 Yonge Street
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**Attn: Ritchie Murray, Acting Registrar**

Dear Mr. Murray:

**Re: EB-2025-0295 – Enbridge 2027-2030 DSM Plan – Submissions on Carbon Value**

We are counsel for the School Energy Coalition ("SEC"). Pursuant to Procedural Order #2 in this matter, this letter constitutes SEC's submissions on the question posed by the OEB with respect to the value of carbon, i.e.:

> *"…whether the consideration of a cost of carbon for DSM cost-effectiveness testing should be within the scope of this proceeding, and added to the draft Issues List."*

SEC approaches this question in two distinct steps, as noted in the sections below.

The OEB will be aware that SEC and other intervenors have shared drafts and discussed the contents of submissions on these points, in order to ensure that all aspects are fully canvassed. This has been of considerable assistance to SEC in developing these submissions.

## Summary of Position

- Policy issues with respect to carbon do not arise until the OEB determines if it has jurisdiction to consider them at all.

- It is critical to define the question carefully in order to determine jurisdiction. In this case, the narrow question is whether the benefit of reducing carbon emissions[1]

[1] Note that this is not an avoided cost, as was the case with the prior DSM methodology, which treated it no differently from any other out of pocket cost, like the price of the commodity itself. With the removal of the

can be included in the testing of cost-effectiveness. Cost-effectiveness tests by their very nature are driven by their internal math, so values must be assigned to all costs and benefits being included in the calculation. The issue is not primarily about the dollar value of reducing carbon; it is about whether the benefit of reducing carbon should be recognized. Establishing a value is just the common method used in cost-effectiveness testing to recognize a benefit.

- Once the question is clearly framed, it is clear that the OEB has jurisdiction to determine what costs and benefits are included in its DSM cost-effectiveness test, and the best way to do so. Broader questions like whether the OEB can "impose a carbon tax", and things like that, do not arise in this case.

- Treating carbon reductions as a benefit of DSM is consistent with Ontario government policy.

- Once jurisdiction is confirmed, policy issues about whether the OEB **should** exercise its discretion to include the benefit of emissions reductions in the TRC+ test should be considered only after the OEB has had the benefit of reviewing an appropriate evidentiary record.

- Therefore, whether and how the benefit of carbon reductions is incorporated into cost-effectiveness testing in this case should be included on the Issues List.

**Is The Question One of Jurisdiction?**

In our submission, it is important at the outset for the OEB to distinguish between issues of jurisdiction – What are the Commissioners legally allowed to do/consider? – and policy – What should the Commissioners do/consider in the exercise of their adjudicative function (i.e. how should they exercise their discretion in setting just and reasonable rates)?

Enbridge has challenged the jurisdiction of the OEB to consider the cost of carbon, so this question is the first that must be answered. What you should do doesn't need to be answered until you have determined what you are allowed to do.

Issues of jurisdiction are about the powers granted to the OEB, and hence the Commissioners in this proceeding, by the Legislature. Since the OEB is a creature of statute, it only has those powers that are granted by statute or are incidental to those powers, and nothing else.

It follows from that principle that extensive evidence and policy discussion is generally not required to determine issues of jurisdiction. Either the statute grants the power to consider certain things (non-energy costs and benefits, for example) or it does not.

While it is indeed true that understanding the item (in this case the benefit of reducing carbon emissions) is critical to understanding whether the statute intended it to be part of what the OEB

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federal charge, there is no longer an avoided cost. In this case, it is instead the benefit of reducing emissions that is being raised, similar to the other non-energy benefits that are already included in the TRC+ test.

considers in making decisions, that is not the same as debating whether or how the OEB should consider it.

One can conclude that the OEB should consider the benefit of carbon reductions in any given aspect of its decision-making, but also conclude that the OEB is not authorized by the statute to do so. In that situation, carbon does not find its way on to the Issues List. It is not necessary to determine policy issues relating to carbon, or assess whether it would make this proceeding better, if the statute doesn't allow its consideration.

Jurisdiction is a binary gate, a yes/no function determined by the statute[2].

Conversely, if the conclusion is that the statute does allow consideration of the benefit of carbon reductions in this situation[3], then the question of whether the OEB should consider it remains open.

In order to do that, though, the OEB requires evidence and analysis. The OEB decides how to exercise its discretion based on evidence, not on a priori positions unsupported by any evidence. Without that foundation, the Commissioners are not in a position to assess whether the benefit of carbon reduction should have a role in the cost-effectiveness testing of DSM programs, and if so how that benefit should be valued in the test. To do so without an evidentiary base would be improper.

By way of example, the discretion to apply a value of zero to carbon reductions in the OEB's cost-effectiveness analysis does not come up in the jurisdiction discussion (unless the Ontario government has so directed, which it has not); it comes up in the later policy discussion, and must be supported by a proper evidentiary record.

SEC therefore concludes that, if the OEB determines that it does not have jurisdiction to consider carbon in testing cost-effectiveness, based on its interpretation of its governing statute, that is the end of the matter.

If the OEB determines that it does have that jurisdiction, however, then whether and how to include the benefit of carbon reductions in cost-effectiveness testing must be included in the Issues List so that the Commissioners will have a full record on that point.

**Defining the Jurisdiction Question**

To determine if the cost of carbon should find its way onto the Issues List, the OEB therefore needs to first define what is the question that it has to address. Whether the OEB has jurisdiction to deal with something is a binary question. Defining what that "something" is that the OEB is considering is more nuanced. It is only once the question is defined that the issue of whether the OEB is allowed to deal with it can be answered with precision.

SEC believes that the difference between the question the Applicant would like to frame, and the question that is actually relevant in this proceeding, is central to determining the OEB's

[2] Although, of course, the extent or scope of the jurisdiction is not binary. See next section

[3] And assuming a carbon value is relevant to the proceeding, which does not appear to be in dispute. In this respect, we agree with IGUA that the relevance of this issue is clear.

jurisdiction in this case. Asking whether the OEB has jurisdiction to impose a carbon tax is very different from asking whether it has jurisdiction to review the value for non-energy benefits used in the TRC+ test to ensure that all such benefits – including GHG emission reductions – are captured.

***The Position of the Applicant.*** In its submissions, the Applicant takes a broad view of the limitations on the OEB's jurisdiction in this proceeding. It says, among other things:

- The OEB, as an economic regulator, is not permitted to consider any factors in this proceeding that do not directly affect customers' bills[4];
- The OEB cannot consider the "downstream" consequences of the use by customers of natural gas[5].
- Assuming a non-zero cost of carbon in assessing the cost-effectiveness of DSM programs is the equivalent of imposing a carbon tax, which the OEB is not permitted to do[6];
- Because the Ontario government has supported the setting of the federal carbon tax at zero, it would be contrary to Ontario government policy and therefore outside of the OEB's jurisdiction to even consider any value of carbon that is not zero[7]; and
- The OEB cannot screen DSM programs using consideration of "environmental and societal reasons[8].

These "the sky is falling" arguments would have profound implications for the way the OEB carries out its functions.

If the OEB were to determine that any of the above positions is legally valid, that would be a general determination of the OEB's jurisdiction, and in SEC's view the notice in this proceeding is not sufficient for that purpose. Notice is required to communicate the important issues being addressed in a proceeding, so that all parties with an interest in those issues have the opportunity to participate.

There are many parties that would have considered participating in this proceeding if they were aware that an issue of the OEB's overall jurisdiction to consider environmental, social, and other non-financial factors in its decision-making was on the agenda. Certainly this would be of concern to every electricity distributor or transmitter (especially ones with NWS plans or with major capital projects), every regulated producer of energy, every other regulated gas distributor, all indigenous governments, communities and interest groups, as well as many customers of both gas and electricity providers and their representatives and many other public interest organizations. All of them would be affected if the OEB suddenly and without warning

[4] Enbridge Submissions, para. 17.
[5] Enbridge Submissions, para. 15.
[6] Enbridge Submissions, para. 22 et seq.
[7] Enbridge Submissions, para. 42.
[8] Exhibit C, Tab 1, Schedule 2, p. 6.

determined that it can no longer, as a matter of law, consider the broader public interest implications of its decisions.

In addition to the technical question of notice, the OEB would have to be concerned with the fundamental change this could make to its longstanding approach to adjudication of all different types of cases.

If the Applicant's very narrow view of the jurisdiction of the OEB were to be accepted, then the first step would be to throw out the TRC+ test and the DCF+ test, since both tests include factors that do not directly impact customers' bills[9]. Following closely on that must be a rethinking of how utility revenue requirements are approved. Any planned expenditure that doesn't reduce customers' bills or improve safety or reliability at the lowest possible cost does not pass muster. Facilities cases would also have to be re-thought, since the normal considerations include many that are not driven by lower customer bills.[10]

We could go on (as "slippery slope" arguments tend to do).

The point is that forcing the OEB into a math-only adjudicative box would prevent the OEB from exercising its judgment and expertise through consideration of the real world in which utilities live, to get to results that are in the public interest.

Not only is this not how the OEB has functioned for many decades (with the support of the government, the industry, and customers), but it is the most sensible interpretation of the statute. The Legislature did not create an expert body to adjudicate energy issues with the intention that it was not allowed to use its judgment and expertise to do so.

This attempt by the Applicant to define the OEB's jurisdiction narrowly is a direct challenge to the OEB's well-understood mandate, and should be rejected by the OEB.

**Is There Still a Jurisdiction Issue?**

Thankfully, the Commissioners in this proceeding do not have to make a determination on the broad jurisdictional challenges set out by the Applicant.

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[9] In particular, the 15% adder in the TRC+ Test would have to go, since it is explicitly dealing with impacts that are not avoided costs in the financial or economic sense. Similar benefits in the DCF+ test would have to be removed, and its three phase structure would have to be re-thought, since it would only be able to include net increases /decreases of bills to distribution customers, and potentially some other energy system benefits that tie directly to customers' bills.

[10] See, for example, Filing Guidelines on the Economic Tests for Transmission Pipeline Applications (https://www.oeb.ca/sites/default/files/Filing%20Guide%20Tx%20Pipelines%20Expansion_EB-2012-0092_20130221.PDF). EBO 134: "8. The second stage should be designed to quantify other public interest factors not considered at stage one. All quantifiable other public interest information as to costs and benefits should be provided at this stage. 9. The third stage should take into account all other relevant public interest factors plus the results from stage one and stage two." See also EBO 188, p. 28: https://www.oeb.ca/documents/cases/Xo188/decision.pdf: "Therefore, the Board will require utilities to file the results of a societal cost test ["SCT"] of their overall portfolios of distribution system expansion when seeking approval of their portfolios. The societal cost test could include monetized, non-monetized and qualitative components. "

The question actually presented in this proceeding is whether the OEB should determine the appropriate value for carbon to be included in the TRC+ Test for cost-effectiveness purposes.

There is no question raised in this proceeding as to whether the OEB can approve a carbon tax. No-one is proposing that the OEB impose a carbon tax, and using a value for carbon in the TRC+ test does not indirectly impose a tax, charge, or levy on anyone relating to the cost of carbon. Just as the environmental and social costs and benefits included in the +15% already in the TRC+ test are not a "tax" imposed on customers, so too including a cost of carbon would not be a tax[11].

The testing of cost-effectiveness necessarily involves monetizing all impacts being taken into account in that test. Cost-effectiveness tests are driven by the math, so everything has to be reduced to a number. If any non-energy cost or benefit is to be considered in the test, it must have a value assigned to it.

The essence of the Applicant's argument, really, is that the OEB is not allowed to assign any value to carbon in its cost-effectiveness testing except zero.

This could be a jurisdiction question, of course, if the Ontario government had a clear policy that the value of carbon is zero.

That is not the government's policy, of course, and they would be shocked if that proposition were put to them. The value of the carbon tax is zero, certainly, and the Ontario government certainly agrees with that federal government decision as a matter of policy.

But, many Ontario government policies are based on the explicit assumption that reducing carbon, and therefore GHG emissions, has a value. GHG emissions by many companies in Ontario are regulated to keep them as low as possible (sometimes at significant expense to the companies). The Ontario government provides grants and loans to companies to reduce carbon. The government supports many low-carbon alternatives to conventional energy sources, and supports research into reducing emissions[12].

There are a long list of examples where the Ontario government sees value in reducing carbon. It is simply incorrect to say that government policy is opposed to consideration of carbon emissions in any form.

Agreeing that the carbon tax should be zero is not the same as saying that carbon emissions are fine and dandy, thanks very much.

The problem is that, unless you can equate a zero value for the carbon tax with a prohibition against considering non-energy benefits in OEB decision-making on conservation programs, then this is not a question of jurisdiction.

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[11] The OEB includes non-energy benefits in other areas as well, e.g. the BCA Framework https://www.rds.oeb.ca/CMWebDrawer/Record/932250/File/document, p.24

[12] There are many examples, including the Hydrogen Innovation Fund, and the eDSM Plan. In the latter case, the government said "Enhanced programming will further provide more customer choice by including beneficial electrification measures to help reduce overall energy use, emissions and costs, beginning with a focus on residential consumers and expanding to all consumer segments." (https://ero.ontario.ca/notice/019-9373).

Further, we note that this also leads to the basic error in the OEB Staff argument. OEB Staff, in their submission, also conflate approval of a zero carbon tax value with a policy saying reductions in carbon emissions are not a government goal. They are not the same thing.

The government of Ontario has never at any time said that it sees emissions reductions as having no value. It has never at any time said that its departments and agencies should treat emissions reductions as having no value.

Treating emissions reductions as a good thing – a valuable goal – is in no way contrary to Ontario government policy.

This, of course, leads us back to the initial question: *whether the consideration of a cost of carbon for DSM cost-effectiveness testing should be within the scope of this proceeding.*

If it is not outside the OEB's jurisdiction – and it clearly is not –, and it is not contrary to Ontario government policy – again, it clearly is not –, and it has not been predetermined by a clear government directive setting the value of carbon at zero – no such directive exists -, then like any other question affecting DSM programs, it should be included in the Issues List.

**Conclusion**

SEC therefore concludes:

- The broader questions of jurisdiction raised by Enbridge do not need to be considered in this proceeding and, if they were to be considered, a new notice to the many other interested parties detailing the challenge to the OEB's jurisdiction would have to be issued.

- The narrow issue of jurisdiction – whether the Commissioners are legally allowed to consider non-energy costs and benefits in cost-effectiveness testing – should be answered in the affirmative, as neither the statute nor government policy prohibits consideration by the OEB of the value of DSM programs in reducing GHG emissions. The value of DSM is not, and has never been, solely about reducing bills for participants in the programs. The OEB has always recognized that DSM is in the broader public interest[13].

- The Ontario government has not established a zero value of carbon reductions for all purposes, and has in many of its policies assumed that reducing carbon emissions has a positive value.

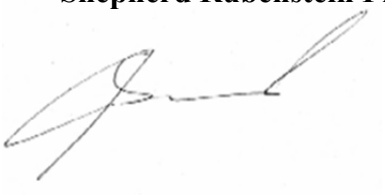
- The exercise of the OEB's discretion in determining what value should be assigned to carbon for cost-effectiveness testing, whether zero or a million dollars, and how any such value should be employed in the DSM context, is not properly done without an evidentiary record on which to make that determination.

[13] And the existence of a separate objective in the Act directed at promoting conservation is an indication that the Act should be so interpreted.

Therefore, in SEC's submission consideration of whether and, if so, how carbon should be dealt with in cost-effectiveness testing should be included in the Issues List in this proceeding.

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)