

Green Energy Coalition

Initial Submission to the Ontario Energy Board Modernization Panel

David Poch, Counsel to the Green Energy Coalition

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The Green Energy Coalition (GEC)¹ has been a lead intervenor advocating for energy efficiency and clean generation before the OEB and Joint Boards for over 25 years. Our submissions herein address needed reforms in both the mission of the Board and its processes. We find that the Board's mission is increasingly at odds with sound economic and environmental objectives and its process is increasingly hostile toward meaningful public participation and informed decision-making.

Our comments address the following topics that the Panel has identified: Mandate; Disruption and Innovation; Stakeholder Relationship; and, Relationship to Government.

Mandate and Activities: Does the scope of the OEB's mandate and activities need to be adjusted (increased, decreased, or otherwise optimized) in order to support the modernization of Ontario's energy sector? If so, in what way?

Addressing the Conservation Conflict of Interest

Utilities that respond to shareholders earn a return on capital investment in infrastructure and earn profit in any given rate period by increasing commodity sales. Accordingly, they have a long-term and near-term conflict of interest when it comes to conservation. Despite that conflict, utilities have billing systems, economies of scope and scale, and customer trust and are thus a logical delivery channel for energy efficiency programs. In Ontario we have managed this conflict by a set of variance accounts and shareholder incentives and by moving much of the

¹ The GEC was previously known as the Coalition of Environmental Groups for a Clean Energy Future (CEG) which was formed as a mechanism for joint intervention in the DSP hearings in 1989. Its current membership includes Sierra Club and Greenpeace. Other local, provincial and national non-profit environmental groups active on energy policy issues have participated in GEC initiatives from time to time, including groups such as David Suzuki Foundation, Pembina Foundation, WWF-Canada, Durham Nuclear Awareness and Friends of the Earth.

electricity conservation task to the IESO. Currently the major gas utilities can each earn up to approximately \$10 million per year in shareholder incentives for DSM performance. The utilities, who earn a return on capital expansion and are owned by upstream interests recognize that the optics of increasing this level of reward are difficult for the Board, and are resistant to demands for higher conservation targets with little likelihood of greater shareholder reward.

The IESO (and the OPA that was subsumed by it) does not have the same shareholder pressure to earn a return but has a staff that has largely come from the utility sector, and has been a proponent of nuclear life extensions and rebuilds and is therefore widely seen as a less than enthusiastic proponent for energy efficiency and renewable generation. It is not sufficiently arm's length from the government. Moreover, its efficiency activities are not reviewed by the Board.

Government department led programs suffer from a lack of transparency, and the impact of short-term and partisan political realities.

The GEC believes that an independent, regulated conservation and renewables utility that has a mission to obtain all cost-effective conservation and renewables would provide a mechanism for energy efficiency and renewables development that is free from these conflicts and shortcomings. Any such mechanism should have a clear mission to pursue all societally cost-effective efficiency and renewables. The conservation and renewables utility should have authority to contract with utilities as delivery agents where that is a preferred vehicle. Both gas and electricity conservation and renewable production procurement by this new entity should be regulated by the Board with transparency. For this mechanism to be effective it is critical that it be an objective, and act independently from government agency, while held to legislated objectives.

Short of such a realignment of responsibilities, if the government wishes to hold true to its stated 'conservation first' policy, it should amend the Board's objectives and mandate to ensure that conservation first is treated as a priority by the Board and that the Board reviews and promotes conservation activities of both the gas utilities and the IESO to ensure that Ontario becomes a leader in efficiency.

Energy Efficiency Objectives:

Promotion of gas conservation is part of the Board's objectives, but that objective has not resulted in aggressive pursuit of efficiency, and certainly has not respected the government policy of 'conservation first'. Recent studies show that DSM spending in Ontario lags far

behind leading cold-climate jurisdictions. The Board's mandate should call for Ontario to be a top performing jurisdiction. Conservation should also be the first priority for cap and trade compliance as energy efficiency brings valuable employment and economic development benefits to the Ontario economy. Regulation of electricity conservation (as we propose) should have a similar statutory test applied.

Energy Efficiency Funding and Coordination:

Three concerns have tended to limit the Board's enthusiasm for conservation program spending. First, in the gas context, the Board has often expressed concern about the potential rate impact on non-DSM participants. We would expect a similar concern to arise if the Board were to have a broader role in CDM regulation. For affluent ratepayers this concern is misplaced as they typically are program participants at some point over the course of years and the alternative of supply expansion will cost more in the long run. However there is a legitimate concern in regard to the impact on low income customers. Ministerial direction has increased low income conservation program efforts and resulted in a modified test for low income program cost effectiveness, but the budget for those programs is insufficient to address the issue. Cap and Trade revenues are now altering the funding context. This suggests that there needs to be a coordination of the allocation of cap and trade revenues with the design and regulation of efficiency programs, especially programs aimed at vulnerable consumers. Currently the Board has no mechanism to address how these two related activities are coordinated and there is often confusion or a lack of customer awareness about program opportunities. If a conservation utility were created it could play such a coordination and education role and the Board would be able to oversee all efficiency activity in one docket, reducing regulatory burden. Where appropriate, utilities could provide efficiency program delivery wearing their non-regulated-entity hats, under contract to the conservation utility.

The second concern that has arisen is in respect of DSM spending on large user programs. Industrial groups repeatedly argue that they already invest in efficiency and that utility and government programs simply reward free riders or skew decision-making, subsidizing competitors and raising rates. Independent studies show that this concern is misplaced. Industry has a far shorter payback requirement than competing energy sector supply investments. As Cap and Trade compliance costs rise and the advantages of energy efficiency become clearer to industry we would expect this problem to recede but not to disappear. Again, an expert agency with a mandate for combined gas and electricity conservation would go a long way toward addressing this problem as it would have the resources to obtain specialized knowledge and work closely with industry to demonstrate real cost-saving opportunities.

Finally, the issue of free-ridership (low net to gross ratios) has increasingly emerged, especially with large customer programs. Free ridership wastes program spending. However, the solution is not to reduce efficiency program budgets. Rather, the correct response is to better target programs and increase program spending to offer effective customer incentives, reaching the customers who would not be considering efficiency opportunities otherwise. The barrier to this approach is the first concern discussed above, the rate impact on non-participants. Again, coordination of efficiency delivery, including utilization of Cap and Trade revenues offers a solution².

We also note that regulators elsewhere (notably the CPUC in California) have found it useful to have at least one Board member selected for their expertise in conservation analysis as this tends to be a somewhat arcane area of regulation.

Gas System Expansion Objective:

The Board recently conducted a lengthy review of the proposed gas transmission system expansion to increase access to U.S. fracking gas. The Board simply disregarded any concern about the GHG implications.

Currently the Board's objectives call for it to "facilitate rational expansion of transmission and distribution systems". Given the incompatibility of increased fracking gas consumption with climate change goals this objective should be removed. Expansion of the gas grid is no longer in the public interest.

The Board's mandate should also be amended to ensure that all its decisions support and do not conflict with the Government's climate change agenda.

Respecting Environmental Objectives

The Act should explicitly require the Board to recognize and uphold government environmental objectives. See for example the proposed federal legislation (Bill C-69) that calls for pipeline regulation that considers: "the environmental effects, including any cumulative environmental

² Substituting efficiency at a cost of 1 – 5 cents/kWh for refurbished nuclear at a cost that is multiples of that would itself dramatically improve rate impacts for all customers.

effects” and “environmental agreements entered into by the Government of Canada”. The proposed Federal legislation specifically references climate change impacts³.

Disruption and Innovation: How can the regulator ensure its policies and practices are best positioned to encourage innovation in Ontario’s energy sector?

Monopoly Ratemaking in an Increasingly Non-Monopoly World

The OEB, like most public utility regulators, employs ratemaking principles that derive from statute and practice and that are intended to protect both the regulated entities and the ratepayers. These rules arose in an era of monopoly regulation to ensure that the public was protected from monopoly abuse while ensuring that the regulated entities received a fair return on investment, ensuring their ability to be reliable providers. However, due to technology change and environmental constraints Ontario’s energy needs will increasingly be met by competitive market and non-regulated providers or by the utilities providing non-monopoly (decentralized) services. Examples include wind and solar generation, conservation and cogeneration.

All of these emerging technologies challenge the economic model of protected monopoly utilities. The historic role of the Board faced with such situations was to protect the monopoly and its captive ratepayers from ‘uneconomic bypass’ that would allow a particular customer to cherry pick a low cost alternative (like a dedicated transmission line to access wholesale power and avoid distribution tariffs). Today regulators are anticipating affordable solar and battery options that could enable a flight from the electricity grid, and next generation electricity-based heating technologies that could dramatically reduce gas grid loads. The challenge is to protect vulnerable captive ratepayers, while embracing emerging, clean and economically efficient technologies and to avoid stranding economically viable assets. In the process, Ontario must avoid subsidizing buggy whip manufacturers.

Unfortunately, protecting economically and environmentally unsustainable monopoly options (buggy whip manufacturers) seems to be the current dominant paradigm. Government policy and legislation, and OEB practice, seeks to expand the gas grid despite fracking gas replacing coal in North America as the dominant climate disruptor, and seeks to protect nuclear rebuilds

³ 22(1)The impact assessment of a designated project must take into account the following factors:(a)the effects of the designated project, including

(i)the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change;...

despite a near universal recognition that the technology is unaffordable, inflexible (both on a planning and operating timescale) and so capital intensive that it crowds out all other options⁴.

Regulatory rules and practice give an effective lifetime guarantee of a return on investment for utility capital expansion while conservation technology and renewable generation owners carry construction, financing, and performance risks.

Even if we are to accept the current practice of government energy planning with the OEB's role limited to implementation, we do not need to maintain tilts in the playing field that shield the government and utilities from the true costs and risks of energy choices. We labour under a bizarre hybrid that awards OPG a near private sector return but shields it from the risk costs of its ventures – the worst of both worlds – high rates for poor investing. This is a good part of the reason that Toshiba and Westinghouse are getting out of the nuclear business but OPG carries on. We will all pay the price if poor investments crowd out better, cleaner, cheaper and more flexible alternatives. It is time to change the rules of the regulatory game. Utilities should receive no explicit or implicit guarantee of a return if their assets can no longer compete with alternatives.

Even with such an approach fostering more risk sensitive investment decisions, utility costs could rise as rates reflect true costs or as grid defection occurs. This will necessitate an explicit mechanism to protect vulnerable captive ratepayers. Any such mechanism should be crafted to subsidize those in need, not to reduce the price signal for conservation.

Recognizing the true system benefits of non-centralized options

To date Ontario has been slow to recognize the full value of conservation and decentralized generation. These options reduce ratepayer borne planning risk and unburden distribution and transmission systems, thereby lower marginal losses, operating costs and long-term capital expenses. Conservation is almost always on-peak and has particular value in avoiding losses which are related to current flow by a square law. With the monetization of GHG emissions there is now the added factor of avoided Cap & Trade compliance cost and risk. Carbon cost forecasts show higher price rise risk than price fall risk, which evidences a risk reduction value for abatement activities (as well as a local employment bonus). Customer conservation or generation removes construction, operation and financial risk from ratepayers. If innovation and economic efficiency is to be fostered the Board needs explicit direction to recognize and monetize these various benefits.

⁴ Nuclear generation has numerous notable drawbacks including huge system reserve margin implications, risk and waste, and has resulted in time of use rates intended to make load conform to the flat diurnal profile of nuclear generation, rather than generation being selected that meets the public's load profile.

Stakeholder Relationship: What are the effective mechanisms to provide stakeholders with appropriate opportunities to participate in OEB decision-making?

The Erosion of Meaningful Public Process

Government policy and legislation has moved from an inclusive and extensive public involvement in energy planning and environmental regulation to planning by ministerial fiat. Demand/Supply Plan and IPSP public hearing reviews have been supplanted by Long-Term Energy Plan consultations. At the same time, the limited remaining role of the Board in protecting the public has been increasingly constrained by the Board's procedural choices⁵.

In step with the government's practice in regard to energy planning, in recent years the Board has increasingly relied on consultations rather than hearing processes to fulfill its remaining regulatory responsibilities. While we recognize the need to contain the cost and time demands of full hearing processes, the Board's enthusiasm for streamlined process has in some cases been at the expense of meaningful public participation, the very reason to maintain a 'public hearings' board. The Board routinely conducts consultations that have no oral hearing phase, provide little or no opportunity for cost reimbursable intervenor expert reports, no cross-examination, and no technical discovery process. Typically the Board limits cost eligibility in these processes to a few hours which precludes meaningful engagement of expert assistance. This places public interest intervenors, who already suffer asymmetry of access to information relative to the regulated entities, at a further disadvantage, and places moneyed interests at a relative advantage.

The Board has also moved to limit the role of intervenors when it does hold oral hearings. As an example, currently the Board has two related processes on the go that directly impact the extent of gas utility conservation investment. The first is a mid-term review of the 5 year DSM plans of Union and Enbridge. These plans currently entail over \$700 million of spending and approximately \$100 million in potential shareholder incentives. The Board has described the public phase of the review process as follows:

“The OEB will hold a Stakeholder Meeting in Spring/Summer of 2018 for Enbridge and Union to provide an overview of the various studies and reports that were submitted,

⁵ In the planning realm the move away from public hearings to ministerial fiat seems to have been driven by the experiences with electricity planning reviews in the past. These extensive reviews ended with proponent withdrawal or Ministerial suspension as it became apparent the proponent's plans were no longer optimal, either economically or politically. While some may consider these processes to have failed, GEC submits that they were a major success, saving the public billions by derailing plans for what would have been massive misspending.

and answer any questions that interested parties may have. Interested parties will also have an opportunity to submit written comments following the Stakeholder Meeting.”⁶

The Board has indicated that eligible intervenors will be limited in their cost eligible hours to up to 16 hours for preparation, and attendance at a Stakeholder Meeting of up to one (1) day in length, and up to 12 hours for written comments following the Stakeholder Meeting. This makes clear that intervenors will not be able to retain experts to adequately test, evaluate and propose alternatives to the utility plans in that proceeding and that process will at best be cursory.

The related proceeding is the Cap and Trade Compliance review currently underway before the Board. This is an oral hearing in which Enbridge seeks approval for over \$385 million in expenditures and Union seeks approval for approximately \$300 million for 2018. Despite this being an oral hearing addressing 2/3 of a billion dollars in activity, the Board’s procedural order did not provide for the opportunity for intervenors to lead evidence. The utilities proposed no incremental conservation in their compliance plans (despite it being one of the listed activities the Board had indicated should be considered in C&T portfolio development). GEC and Environmental Defence sought an amendment to the procedural order to allow us to present evidence on conservation as a more cost-effective and sustainable alternative to some of the allowance or carbon credit purchases. Before considering our request the Board required us to file an outline of the proposed evidence and a budget. In rate hearings no such prior go ahead for the filing of intervenor evidence is needed. Needless to say, the utilities do not face such prior restraint on their evidence which is all funded by ratepayers.

On the electricity side, the Board has denied attempts to test the efficacy and cost-effectiveness of the OPA’s (now IESO’s) CDM portfolio. The Board limits its review to an examination of administrative cost control.

In our submission, this trend toward a narrow interpretation of mandate and a reducing of regulatory costs at the expense of meaningful public participation is penny wise and pound foolish. There seems to be no weighing of the regulatory costs against the savings that a better and broader process could help achieve. The Board risks making ill informed decisions while leaving the public dissatisfied with the process.

Concerns with the Ratepayer Advocate Proposal

Of late there has been discussion of the concept of a ratepayer advocate. GEC is concerned that the creation of such a role risks two deleterious outcomes. First, because there is no

⁶ OEB letter to participants in DSM Mid-Term Review (EB-2017-0127 and EB-2017-0128), June 20th, 2017

monolithic ratepayer or public interest, any single advocate granted special status will inevitably amplify one perspective above all others. As ‘environmental’ intervenors we have frequently been at odds with ‘consumer’ intervenors who focus on near term rate reductions rather than long-term economic or social gains. The risk is that a ratepayer advocate could not adequately represent these competing viewpoints. A second, related, concern is that the presence of a ratepayer or public interest advocate would encourage the Board to further limit intervenors’ participatory rights and limit cost awards for public interest intervenors.

Relationship to Government: Considering the diversity of Ontario’s energy sector, how can the OEB best fulfill its adjudicative responsibilities and obligations within an accountability framework set by the legislature?

The OEB’s Retreat from its Role in Providing a Check and Balance

Leaving aside the Board’s refusal to play a role in environmental protection, the Board has also been increasingly reluctant to provide economic oversight. Perhaps the most telling example is its recent review of the Pickering life extension. While government appears to be supportive of the life extension, unlike the Darlington rebuild, there is no explicit government direction or LTEP determination requiring the life extension. Furthermore, even if government support is taken as a policy direction, that alone should not limit the OEB’s role in reviewing and commenting upon the cost-effectiveness of the proposal. The economics of Pickering are among the worst of any nuclear facility in North America. Given the weak ‘need’ case for the extension, government should be interested in hearing from the Board and the public on the merits of the proposal versus alternatives. Instead, the Board limited its review to out of date analyses that IESO could provide, despite evidence that changed circumstances likely moved the project economics from marginal to a major loss. It may well be that faced with the true story on the dismal economics government would still pursue the project for system planning reasons, but the OEB was not even willing to delve into the economics in a serious fashion to inform such a weighing. This, in our submission amounted to an abdication of responsibility.

To inform government decision-making, and increase transparency and accountability, the Board’s mandate should call upon it to review and report on the societal cost-effectiveness of the capital expansion activities of the entities it regulates, whether or not those activities are the subject of government policy determinations.