

# Elson Advocacy

March 7, 2021

## BY EMAIL AND RESS

### David Stevens

Aird Berlis  
Brookfield Place,  
181 Bay Street, Suite 1800,  
Toronto, Canada M5J 2T9

Dear Mr. Stevens,

### **Re: EB-2020-0091 – Integrated Resource Planning Framework Proceeding**

I am writing to formally submit a request to your client on the record relating to final submissions in this matter.

Environmental Defence respectfully requests that Enbridge address all issues up-front in its argument-in-chief rather than wait to address certain issues in reply. In particular, we ask that Enbridge respond to the points made in the GEC/ED presentation<sup>1</sup> and the materials in the ED compendium,<sup>2</sup> including:

- (a) The critiques of Enbridge's proposed cost-effectiveness tests;
- (b) The cost-effectiveness analysis proposed by Mr. Neme;
- (c) The proposal to address demand/price risk arising from market forces and policy driven by climate change through a sensitivity analysis; and
- (d) The reasons and evidence provided in support of the importance of that sensitivity analysis.

In the past, we have been involved in OEB processes where certain issues have been raised during the hearing but the utility has waited until its reply to address them. This is not proper reply. The Court of Appeal has noted that a reply submission "should not be permitted where it merely confirms or reinforces points already made or which could have been made in the moving party's initial" submissions.<sup>3</sup> Although improper reply is unfair to intervenors, it is most problematic from the perspective of the OEB itself, which is left without a complete picture on important issues.

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<sup>1</sup> <https://www.rds.oeb.ca/CMWebDrawer/Record/704194/File/document>.

<sup>2</sup> <https://www.rds.oeb.ca/CMWebDrawer/Record/705615/File/document>.

<sup>3</sup> *Dennis v. Ontario Lottery and Gaming Commission*, 2012 ONCA 368, at para. 8, <https://canlii.ca/t/frj6j#par8>.

I have no doubt in your case that your client will not attempt to split its case or reply improperly. This is an issue I have been noting for some time in OEB cases and merely wish to bring it to your attention. I also hope that flagging the above specific issues may be of assistance.

Yours truly,

A handwritten signature in blue ink, appearing to read 'K. Elson', with a stylized, cursive script.

Kent Elson

CC: Parties in the above process