

Elson Advocacy

October 5, 2022

BY RESS

Nancy Marconi

Registrar

Ontario Energy Board

2300 Yonge Street, Suite 2700, P.O. Box 2319

Toronto, Ontario M4P 1E4

Dear Ms. Marconi:

Re: EB-2022-0157 – Enbridge Gas Inc. – Panhandle Regional Expansion Project

I am writing on behalf of Environmental Defence to respond to Enbridge's objection to the portion of Dr. McDiarmid's evidence on greenhouse heat pumps that will cite third party information.

It appears that there is a misunderstanding. Environmental Defence noted that Dr. McDiarmid would clearly identify third party information in response to directions provided in a previous OEB procedural order in EB-2016-0160. In that case the OEB did not accept two witnesses as experts but still accepted their evidence and directed them to "prepare and present evidence that identifies all of the third party information on which they rely to support the recommendations that they invite the OEB to consider."¹ My comments about third party information were simply meant to reassure the OEB that any such information would be clearly identified.

Mr. Keizer also states: "In the absence of an opinion of an appropriately qualified expert, it would appear that the only fact that Dr. McDiarmid can speak to is that the third-party statements were made and not the basis of their content." This is inconsistent with the OEB's procedural order noted above. It also misunderstands the law around expert opinion evidence. Opinion evidence involves drawing inferences from facts, as opposed to stating the facts themselves.² Opinion evidence is generally prohibited, with the exception of opinion evidence from a duly qualified expert. Where evidence is factual alone, expert qualification is not required.

Furthermore, the OEB is an administrative tribunal that is not bound by the intricacies of technical evidentiary rules. The OEB is more than capable of reviewing Dr. McDiarmid's

¹ See e.g. EB-2016-0160, *Decision and Procedural Order No. 4*, p. 6 ([link](#)).

² *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 (CanLII), [2015] 2 SCR 182, at para 14 ([link](#)).

evidence and applying the appropriate weight to it. There is no need to pre-emptively rule that evidence as inadmissible without even seeing it, as Enbridge proposes.

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 proceeding