

Elson Advocacy

June 30, 2023

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-2022-0156 – Enbridge Gas Inc. – Selwyn Pipeline Project
EB-2022-0248 – Enbridge Gas Inc. – Mohawks of the Bay of Quinte First Nation Pipeline Project
EB-2022-0249 – Enbridge Gas Inc. – Hidden Valley Pipeline Project

I am writing on behalf of Environmental Defence to seek procedural directions regarding the review motion it filed on April 25, 2023 in the above matters. This motion has been held in abeyance since it was filed. Environmental Defence asks that the motion be adjudicated and that a schedule be set for submissions.

Background

In these proceedings, Enbridge seeks leave to construct gas pipelines to three community areas not currently served with gas. The project economics depend on forecast revenue from customers that Enbridge predicts will switch to gas. On March 9, 2023, Environmental Defence sought leave to file evidence in this proceeding on the cost-effectiveness of heat pumps in these communities as this relates to Enbridge's customer attachment and revenue forecasts.¹ Board Staff submitted that the evidence was relevant and should be allowed, as did Pollution Probe.²

The hearing panel did not to approve the filing of Environmental Defence's proposed evidence.³ Instead, the hearing panel found that the issue could be explored solely through evidence from Enbridge obtained through discoveries.⁴ Environmental Defence filed a Notice of Motion to review this decision but also sought to ask supplementary interrogatories.⁵ The hearing panel subsequently declined to allow any supplementary interrogatories.⁶ Instead, it invited Enbridge

¹ Environmental Defence Correspondence, March 9, 2023 ([link](#)).

² Board Staff Correspondence, March 28, 2023 ([link](#)); Pollution Probe Correspondence, March 17, 2023 ([link](#)).

³ Decision on Intervenor Evidence and Confidentiality, April 17, 2023 ([link](#)).

⁴ *Ibid.*, p. 5.

⁵ Environmental Defence Notice of Motion, April 25, 2023 ([link](#)); Environmental Defence Correspondence, June 7, 2023 ([link](#)) and June 14, 2023 ([link](#)).

⁶ Procedural Order #3, June 28, 2023 ([link](#)).

to address to the topics raised by Environmental Defence in its submissions.⁷

In brief, Environmental Defence submits in the review motion that it was a breach of procedural fairness for the hearing panel to prevent Environmental Defence from filing its own evidence and requiring it to rely solely on evidence and submissions from an opposing party.⁸ Alternatively, if the hearing panel's reasons are interpreted as finding the proposed evidence to be irrelevant, Environmental Defence submits that was an error of law.⁹

Schedule for Submissions

Environmental Defence asks that the motion be adjudicated and that a schedule be set for submissions. It appears to us that there are two main scheduling options. The motion could be adjudicated now with the dates for argument suspended in the interim. Alternatively, the review motion could be heard following a decision by the hearing panel on the merits of the case, with that decision being subject to review. We tend to think the motion should be addressed now to avoid the possibility of effort thrown away, but are in the OEB's hands and do not take a strong position on this timing question.

In setting the schedule, Environmental Defence requests two weeks to provide its motion record and submissions as we expect to be engaged in preparation for and participation in Enbridge's rebasing hearing shortly, along with a number of other commitments in other matters.

Please let us know if any further information is required.

Yours truly,



Kent Elson

cc: Applicant and intervenors in the above applications

⁷ *Ibid.*

⁸ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para. 22; *Bailey v. Saskatchewan Registered Nurses' Association*, 1996 CanLII 5059 (SK CA).

⁹ *Ontario (Liquor Control Board) v. Lifford Wine Agencies Ltd.*, 2005 CanLII 25179 (ON CA), at para 35; see also *Université du Québec à Trois-Rivières v. Larocque*, 1993 CanLII 162 (SCC), [1993] 1 SCR 471 at 490.