

July 5, 2023

EMAIL & RESS

Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario M4P 1E4

Attention: Nancy Marconi, Registrar

Dear Ms. Marconi:

**Re: Enbridge Gas Inc.
Ontario Energy Board (“OEB”) File Nos.
EB-2022-0156 – Selwyn Pipeline Project
EB-2022-0248 – Mohawks of the Bay of Quinte First Nation Pipeline Project
EB-2022-0249 – Hidden Valley Pipeline Project
Response to Letter from Environmental Defence (“ED”)**

This letter is in response to Environmental Defence’s (“ED”) June 30, 2023 correspondence wherein ED sought procedural directions regarding its April 25, 2023 review motion filed in the above matters and held in abeyance. In particular, ED asks that the motion be adjudicated with the motion heard at this point in the proceeding (and the current argument schedule abandoned) or after final submissions and a decision in these proceedings at which time ED would seek to review that decision (presumably on the same grounds as set out in its review motion).

Enbridge Gas Inc. (“Enbridge Gas”) submits that neither option is appropriate. The appropriate option is for the OEB to dismiss ED’s review motion without a hearing pursuant to Rule 43.01 of the *Rules of Practice and Procedure* since ED fails to satisfy the threshold question. ED’s review motion does not raise a relevant issue material enough to warrant a review of the decision or order on the merits.

ED’s motion is no more than an attempt to reargue an issue appropriately determined by the OEB having heard full submissions in that regard. ED’s motion raises no new issue and does not in any way articulate an error which is in fact an error. In effect, it disputes the OEB’s exercise of discretion as to the relevance of the evidence proposed by ED. The exercise of discretion to deny the admissibility of evidence on the basis of relevance is not an error of law where the tribunal exercised its discretion to do so based on its interpretation as to whether the evidence would advance their consideration of the ultimate issues on which the tribunal is to decide. The fact that ED disagrees with the decision is not sufficient reason to assert an error or to have the motion heard on its merits.

The OEB clearly understood the position of ED having expressed in its decision that ED’s intent

to lead evidence was to compare the costs for an average customer to convert their existing heating systems to electric cold climate heat pumps relative to the cost of converting to natural gas. The OEB clearly acknowledged that the proposed evidence was expected to address the potential for electric cold climate heat pumps to provide superior performance to natural gas service in terms of costs and risks. To advance the OEB's consideration of Enbridge Gas's customer attachment forecast, ED is in effect asking the OEB to conclude that based on the "average customer", electric cold climate heat pumps are superior and that the customer forecast is incorrect. The OEB on exercising its discretion indicated that such matters as potential customer take up of potential alternatives to natural gas, the impact on, and support of the community must be canvassed to make such a determination. The reference to community meaning the project areas in question in the Applications currently before the OEB. On this basis, the OEB concluded that the evidence proposed would not enable the OEB to conclude on the take-up of electric cold climate heat pumps instead of an expansion of natural gas facilities in serving the relevant communities.

In its Notice of Motion, ED asserts that the OEB erred since it did not appropriately consider the issues on which the evidence relates which is (a) testing the customer attachment forecast and the revenue forecast that is derived therefrom, and (b) testing the accuracy of the Applicant's communications to potential new customers. However, if the evidence is "to compare the costs for an average customer" to convert their heating to electric cold climate heat pumps instead of converting to gas¹, the expectation would be the OEB render some conclusion as to the effectiveness of electric cold climate heat pumps relative to natural gas service even in the context of the issues above. In this regard, the OEB exercised its discretion and concluded that ED's evidence would not advance the OEB's consideration of these issues given potential customer take up of potential alternatives to natural gas, the impact on, and support of the community must be canvassed to make such a determination. ED raised no new issue and no error that is in fact an error, merely the restatement of the issues already before the OEB at the time it made its decision and exercised its discretion to deny the admission of the evidence.

The OEB appropriately recognized that ED could test the customer attachment forecast and the revenue forecast and test the accuracy of the Applicant's communications to potential new customers through the interrogatory process. In this regard, ED has also not raised a clear or actual error. Furthermore, ED fails to meet the threshold since it is not materially harmed by the decision sufficiently to warrant a full review on the merits. According to the Notice of Motion, ED, without the proposed evidence, is unable to make submissions to propose adjustments to the financial parameters to better protect existing customers and to seek a condition to ensure that customers are provided fair and accurate information by the Applicant in its promotional materials. The Applications have an extensive record based on interrogatory responses provided that would enable ED to make submissions in this regard. The record relates to Enbridge Gas's customer attachment forecasts and assumptions arising from its surveys and consultation with the actual communities affected.²

As a result of the foregoing, Enbridge Gas submits that ED's review motion should be dismissed

¹ ED correspondence, March 9, 2023.

² See responses to Exhibit I.ED.2 (public consultation), Exhibit I.ED.3 (market research and public consultation), Exhibit I.ED.4 (attachment forecast), Exhibit I.ED.5 (customer questionnaire and public consultation), Exhibit I.ED.15 (economic analysis), Exhibit I.ED.16 (economic analysis and attachment forecast), Exhibit I.ED.22 part a) (attachment forecast impacted by decarbonization), and Exhibit I.ED.28 parts b) to d) (public consultation and communication strategy).

without a hearing. If, however, the OEB chooses to hear the motion (both the threshold issue and the merits) at a date to be set, it is only appropriate that the motion be heard before final submissions in these proceedings.

Yours truly,

A handwritten signature in black ink, appearing to be 'CK' or similar initials, written in a cursive style.

Charles Keizer

cc: Haris Ginis, Enbridge Technical Manager, LTC Applications
Henry Ren (Enbridge Gas Counsel)
Guri Pannu (Enbridge Gas Counsel)
Catherine Nguyen (OEB Staff)
Zora Crnojacki (OEB Staff)
Petar Prazic (OEB Staff)
Intervenors (EB-2022-0156/EB-2022-0248/EB-2022-0249)