

Elson Advocacy

July 6, 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-2022-0156/0248/0249 – Enbridge Gas Inc. – Selwyn, Mohawks of the Bay of Quinte First Nation, and Hidden Valley Pipeline Projects

I am writing to respond to Enbridge's letter of July 5, 2023 requesting that Environmental Defence's review motion be summarily dismissed without a hearing pursuant to Rule 43.01.

Enbridge argues that the motion should be summarily dismissed on the basis that Environmental Defence "disputes the OEB's exercise of discretion." This is incorrect. Environmental Defence's motion is based on an alleged breach of procedural fairness (preventing Environmental Defence from filing its own evidence and requiring it to rely solely on the evidence of its opponent) and, in the alternative, an alleged error in determining relevance. Both are alleged reviewable errors, not mere matters of discretion.¹

Enbridge's remaining comments do not properly relate to the Rule 43.01 threshold and instead go to the merits of the motion and the application. Although Environmental Defence does not agree with those points, we propose that they be addressed as part of the motion and/or application submissions.

Yours truly,



Kent Elson

cc: Applicant and intervenors in the above applications

¹ *Ontario (Liquor Control Board) v. Lifford Wine Agencies Ltd.*, [2005 CanLII 25179 \(ON CA\)](#), at para 35 ("The error of an administrative tribunal in determining the relevance of evidence is an error of law."); *Bailey v. Saskatchewan Registered Nurses' Association*, [1996 CanLII 5059 \(SK CA\)](#) ("fundamental fairness and the *audi alteram partem* rule requires that both sides be given an opportunity to adduce evidence, provided such evidence is in conformity with the Rules of Evidence and is relevant"); see also *Baker v. Canada (Minister of Citizenship and Immigration)*, [\[1999\] 2 SCR 817 at para. 22](#); *Université du Québec à Trois-Rivières v. Larocque*, [1993 CanLII 162 \(SCC\)](#), [\[1993\] 1 SCR 471 at 490](#).