

Ms. Nancy Marconi
Registrar
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

August 24, 2023

**EB-2022-0249/0248/0156 – Community Expansion Projects - Leave to Construct
Pollution Probe Comments on Enbridge Reply**

Dear Ms. Marconi:

In Enbridge's Reply Submission dated August 23, 2023 for the above noted proceedings, Enbridge requests that the OEB not consider certain Pollution Probe references to the OEB public record from proceedings that focused on the same issues defined in the expansion proceedings noted above. Enbridge implies that the references are not related to the issues being considered in these proceedings, but that is simply not correct. They are not only directly relevant to the Issues List, but they also represent best available information the OEB has on the public record related to the issues being considered. The references used in these proceedings are specifically relevant to the issues being considered and also specifically relevant to the direction provided by the OEB to Parties when they submit their Argument¹. It is impractical and not in the public interest to suggest that the OEB should not use best available information on the public record when deliberating on these proceedings.

The OEB public record is not new evidence from Pollution Probe as suggested by Enbridge. Pollution Probe submits that it is entirely appropriate to reference the OEB public record, particularly when the issues are the exact same as the issues being considered in this proceeding (e.g. EBO 188 rules and application, forecasted, attachment rates, performance of recent expansion projects, etc.). It is common procedural practice to refer to existing relevant evidence and/or OEB Decisions where appropriate and a change to this approach would constitute a change to procedural practice for OEB proceedings. In fact, Enbridge routinely does the same and it would be more appropriate for Enbridge to provide a factual explanation on why its submissions are superior rather than attempting to limit consideration of best available information on the public record. Furthermore, Pollution Probe has been previously informed by the OEB that where materials already exist as part of the OEB's public record that they do not need to be filed again, but simply referenced. This is a practice commonly used.

Enbridge suggests that it is beyond the OEB capacity to consider evidence on the public record without Enbridge's consent. This is clearly not true or in alignment with the public interest or standard procedural practice for OEB proceedings. Rules 1.03 of the OEB Rules of Practice and Procedure indicated that: *The OEB may dispense with, amend, vary or supplement, with or without a hearing, all or part of any Rule at any time, if it is satisfied that the circumstances of the proceeding so require, or it is in*

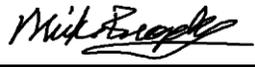
¹ For example, the specific policy questions highlighted by the OEB to be addressed in Argument for these proceedings relate to the exact same issues in the references provided.

the public interest to do so. Furthermore Rule 2.01 indicates: These Rules shall be liberally construed in the public interest to secure the most just, expeditious, and efficient determination on the merits of every proceeding before the OEB.

Pollution Probe submits that it has taken an appropriate approach and that the OEB has the ability and duty to consider all relevant public information on record to ensure a full and satisfactory understanding of the issue in these proceedings. Proposing that the OEB be limited in its ability to consider facts on the OEB public record in reaching a decision is not appropriate in Pollution Probe's view.

On a separate subject, Pollution Probe appreciates the new information provided by Enbridge in its Reply Argument related to construction through bedrock and impacts to water wells along the proposed projects. The updated contractor information and letters to residents along the projects is recent information and was not available during the written proceeding. Pollution Probe appreciates Enbridge sharing this information as part of the public record. Impacts and costs related to construction through bedrock can be significant and should the methods Enbridge hopes to employ not be successful, additional community notification, mitigation and testing may be required before blasting commences. The OEB may wish to consider that scenario in its deliberations.

Respectfully submitted on behalf of Pollution Probe.



Michael Brophy, P.Eng., M.Eng., MBA
Michael Brophy Consulting Inc.
Consultant to Pollution Probe
Phone: 647-330-1217
Email: Michael.brophy@rogers.com

Cc: Enbridge Regulatory (via email)
All Parties (via email)
Richard Carlson, Pollution Probe (via email)