



**Environmental Defence**

**Motion for Review of OEB Decisions in  
EB-2022-0156/EB-2022-0248/EB-2022-0249**

**NOTICE OF HEARING AND PROCEDURAL ORDER NO. 1  
October 18, 2023**

On April 25, 2023, Environmental Defence filed a Notice of Motion to review the Decision on Intervenor Evidence and Confidentiality dated April 17, 2023, in which the OEB denied its request to file evidence in three Enbridge Gas Inc. (Enbridge Gas) community expansion leave to construct proceedings<sup>1</sup> (Decision on Intervenor Evidence). The OEB assigned file number EB-2023-0190 to the motion.

On July 12, 2023, the OEB determined that it would not consider the motion before the final decisions on the three community expansion applications were issued. On September 21, 2023, the OEB issued its final decisions approving the applications with the OEB's standard conditions of approval (Final Decisions).

On September 27, 2023, Environmental Defence filed an Amended Notice of Motion. The Amended Notice of Motion requests:

- An order to vary or cancel the OEB's Decision on Intervenor Evidence
  - An order that the proposed evidence is admissible
  - An order that the proposed evidence is eligible for cost recovery
- An order that the Final Decisions on the three community expansion applications are cancelled and remitted for reconsideration

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<sup>1</sup> Selwyn Pipeline Community Expansion Project, EB-2022-0156; Mohawks of the Bay of Quinte and Shannonville Community Expansion Project, EB-2022-0248; Hidden Valley Community Expansion Project, EB-2022-0249.

## Hearing on Threshold Question and Merits

Under Rule 43 of the OEB's *Rules of Practice and Procedure*, the OEB may determine, with or without a hearing, a threshold question of whether a motion raises relevant issues material enough to warrant a review of the decision or order on the merits.

The OEB has determined that it will hear arguments, in writing, on both the threshold question and the merits at the same time.

A new file number, **EB-2023-0313**, has been assigned to this matter.

## Intervenors and Cost Awards

This Notice of Hearing and Procedural Order No. 1 will be sent to Enbridge Gas and all other parties to the EB-2022-0156, EB-2022-0248 and EB-2022-0249 proceedings. Intervenors in those proceedings are approved as intervenors in this motion. Intervenors that were determined to be eligible for costs in those proceedings are also eligible for costs in the motion.

Being eligible to apply for recovery of costs is not a guarantee of recovery of any costs claimed. Enbridge Gas will be liable for any approved intervenor costs.

## Written Submissions

Parties are invited to make written submissions on both the threshold issue and the merits of the motion. A schedule for submissions is set out below. Environmental Defence is provided the opportunity to file written submissions first to enable other parties to respond in their submissions.

For consistency, the OEB requests that submissions use the same terms defined in this Notice of Hearing, namely the Decision on Intervenor Evidence and Final Decisions.

Without limiting the scope of submissions, the OEB is particularly interested in hearing from parties regarding the following considerations.

1. The OEB's role and responsibilities regarding procedural fairness, particularly the balance between the right to be heard and the ability of a tribunal to control its own process and to conduct an efficient proceeding.
2. The OEB would also like to hear more on the two judicial decisions cited by Environmental Defence in support of its motion (see footnotes 1 and 3 in the Amended Notice of Motion), and any other relevant case law the OEB should consider.

3. As the OEB chose not to consider the motion until after the Final Decisions were issued, the OEB is interested in hearing more about how the Final Decisions might have been different if Environmental Defence had been permitted to file its proposed evidence.
4. The Amended Notice of Motion only references two claimed errors in the Final Decision: the misapprehension of jurisdiction regarding the allocation of the revenue shortfall risk; and the disregarded submissions regarding Enbridge Gas's customer attachment survey. The OEB is interested in submissions on these two alleged errors.

The OEB notes that Environmental Defence did not request a stay of the Final Decisions under Rule 40.04. Following the release of the Final Decisions, Enbridge Gas filed letters with the OEB to provide notification that construction of the projects would begin within 10 days of each letter.

**THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. If Environmental Defence wishes to make a written submission in addition to the Amended Notice of Motion, it shall file it with the OEB and serve it on all other parties by **November 1, 2023**.
2. Any written submission by Enbridge Gas, intervenors, and OEB staff shall be filed with the OEB and served on Environmental Defence and all other parties by **November 15, 2023**.
3. Any reply submission by Environmental Defence shall be filed with the OEB and served on all other parties by **November 29, 2023**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's *Rules of Practice and Procedure*.

Please quote file number **EB-2023-0313** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address

- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [Filing Systems page](#) on the OEB's website
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar at the address below and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Zora Crnojacki, at [Zora.Crnjacki@oeb.ca](mailto:Zora.Crnjacki@oeb.ca) and OEB Counsel, Ian Richler, at [Ian.Richler@oeb.ca](mailto:Ian.Richler@oeb.ca).

Email: [registrar@oeb.ca](mailto:registrar@oeb.ca)

Tel: 1-877-632-2727 (Toll free)

**DATED** at Toronto, **October 18, 2023**

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar