

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

November 13, 2023

**EB-2023-0313 – ED Motion
Pollution Probe Submission**

Dear Ms. Marconi:

Pollution Probe is in receipt of the Environmental Defence Motion and related correspondence. The OEB requested submissions and indicated that “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. Ontario Energy Board EB-2023-0313 Environmental Defence Notice of Hearing and Procedural Order No. 1 3 October 18, 2023
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.

Environmental Defence requested to file evidence in the community expansion Leave to Construct proceedings for three communities¹. The proposed evidence pertained to issues in scope for the proceedings and were specifically relevant to issues acknowledged by the OEB. There is no question on the relevance and value of the evidence proposed by Environmental Defence. The OEB provided a process for Enbridge to provide updated information² in an attempt to provide more complete, accurate and relevant information. The Updated information filed by Enbridge was not helpful, incomplete and biased in favour of supporting the natural gas project in lieu of the more cost-effective energy options to consumers in those communities. This is not surprising since the purpose of the Enbridge evidence is to support receiving Leave to Construct approval from the OEB. It is rational to understand that the Applicant’s evidence could be biased, even if the bias is not a conscious intention. That is one of the reasons why the OEB enables other parties to file evidence in support of a balanced and fair process. The process the OEB used in these proceedings (i.e. Enbridge evidence updates)

¹ EB-2022-0156/0248/0249

² I.ED.16

did not remove the relevance or need for the evidence proposed by Environmental Defence. Pollution Probe submits that in order to provide a fair and reasonable process, the OEB should have enabled Environmental Defence to proceed with its proposed evidence. The evidence from the Applicant did not provide a reasonable basis for the Decisions issued in these proceedings.

Given the issues outlined in the proceedings (and related proceedings such as EB-2022-0200), Pollution Probe recognizes the challenges that the expansion projects provide. In the Decisions for the recent three expansion projects the OEB recognized that the Enbridge forecast was the only evidence available on the record and that the OEB had limited evidence to rely on to the contrary. There was sufficient uncertainty in the evidence provided by the Applicant to validate whether the projects proposed would actually meet the revenue forecast and Profitability Index Enbridge suggests. Given that Enbridge planned to proceed based on their own evidence and without consideration of relevant issues and risks identified in the proceedings, the OEB did note that “there is a reasonable expectation that such customers will not be called upon to provide a further subsidy to compensate for post-RSP revenue shortfalls”. That perspective mitigates one of the risks on rate payers for an inflated or unrealistic revenue forecast. If the OEB had additional evidence to demonstrate that customer additions would not likely occur as forecasted by Enbridge, the outcome of the OEB Decision in these proceedings would likely be different.

The OEB has recognized the importance and relevance of the proposed Environmental Defence evidence to community expansion Leave to Construct projects. Given the importance of this issue and the proposed evidence the OEB has placed a similar proceeding into abeyance pending the outcome of this Motion³. Pollution Probe supports this approach and submits that the issues intended to be covered in the Environmental Defence evidence could be relevant to the three expansions projects and a large number of similar projects currently (or expected to be) filed with the OEB. Pollution Probe submits that delaying or avoiding the ability for Environmental Defence to bring forward relevant evidence in these proceedings is not in the public interest.

Respectfully submitted on behalf of Pollution Probe.



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³ EB-2022-0111 OEB Ltr_Abeyance_EGI_Bobcaygeon_20231011_eSigned