

Elson Advocacy

January 8, 2024

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: Motion to review decisions in EB-2022-0156/0249
Ontario Energy Board File No. EB-2023-0313**

Enclosed please find the cost claim of Environmental Defence in the above matter. The costs for this motion total \$8,174 plus tax. Environmental Defence submits that this is reasonable in light of the complex legal issues raised in the motion surrounding procedural fairness, relevance, and the substance of the decisions under review. There was a considerable amount of work required to prepare both the initial submissions and the reply submissions, including the review of, analysis of, and response to the many cases cited by Enbridge and Board Staff

In a previous letter, Enbridge suggested that there should potentially be cost consequences for Environmental Defence's decision to withdraw the motion with respect to the Mohawks of the Bay of Quinte First Nation. This is not warranted.

First, Environmental Defence's position with respect to this project in the First Nation has been consistent throughout and it was reasonable to include that project in the motion and to subsequently withdraw it. Environmental Defence has maintained its position that special considerations apply and, where any relief it requested conflicts with the relief requested by the First Nation, the latter should prevail, including the First Nation's request that construction proceed. When making its submissions for the motion, Environmental Defence noted that there is no conflict with respect to Enbridge assuming the revenue forecast risk and with respect to the proposed condition that customers be provided with accurate information on the annual operating costs of heat pumps versus gas in any marketing materials that discuss operating cost savings from gas.

The First Nation subsequently contacted Environmental Defence and specifically asked that the review motion be withdrawn with respect to the First Nation. At this point, due to the change in circumstances, Environmental Defence requested the withdrawal. This did not represent a change of position or other anything warranting adverse costs consequences.

Second, there was almost no incremental cost to include the First Nation project in the motion. We estimate that the costs that would be directly attributable to that project to equal to approximately 0.4 hours.

Although Environmental Defence was ultimately unsuccessful, it reasonably raised valid issues. The Review Panel's decision noted as follows: "The review panel finds that the motion meets the threshold. The review panel accepts that the motion raises legitimate questions regarding the relevant issue of Enbridge Gas's revenue forecast."¹ Enbridge also took the motion seriously, including through its 30-page submissions and the extensive case law it took the time to research and cite. In accordance with past Board practice, we respectfully submit that Environmental Defence should be awarded reasonable costs for the work involved in raising these legitimate questions.

Yours truly,



Kent Elson

cc: Applicant and intervenors in the above applications

¹ Decision and Order, December 13, 2023, p. 9.

EB-2023-0313 : 1 : Kent Elson

COST CLAIM NUMBER
1828

SUBMISSION DEADLINE DATE
January 11, 2024

CLAIM STATUS
Submitted

EB#
EB-2023-0313: Facilities: Motion to Review (New):
Environmental Defence Canada Inc.

OTHER EB#S

PHASE #*
1

INTERVENOR
Elson, Kent; +1 (416) 906-7305
kent@elsonadvocacy.ca

INTERVENOR COMPANY*
Environmental Defence Canada
Inc., Toronto: Corporation

INTERVENOR TYPE
Full Registrant

HST RATE ONTARIO
13.00

EXCHANGE RATE

COUNTRY

HST NUMBER
872151923RT0001

LATE SUBMISSION ALLOWED
No

EXTENSION DEADLINE DATE

PARTICIPANTS

New	Non-Filing Participant First, Last Name	Filing Participant	Total (\$)	Total Hours	Participant Claim Status
No	,	Elson, Kent; +1 (416) 906-7305 kent@elsonadvocacy.ca	7,930.34	24.20	Submitted
No	,	Montgomery, Amanda; +1 (416) 906-7305 amanda@elsonadvocacy.ca	1,306.28	6.80	Submitted

ATTACHMENTS

Attachment	Document Type	Import Message
ED_CvrLtrCosts_20240108.pdf	Cover Letter	

TOTAL LEGAL/CONSULTANT/OTHER FEES
8,174.00

TOTAL DISBURSEMENTS
0.00

TOTAL HST
1,062.62

TOTAL CLAIM
9,236.62

TOTAL AMOUNT AWARDED

TOTAL HOURS CLAIMED
31.00

TOTAL HOURS DISALLOWED

REASON FOR
DISALLOWANCE

REASON FOR
DISALLOWANCE - 2

REASON FOR
DISALLOWANCE - 3

MAKE CHEQUE PAYABLE TO
Elson Advocacy

SEND PAYMENT TO ADDRESS
1062 College Street
Toronto, Ontario
M6H1A9

ATTENTION

SUBMIT SECTION

I am a representative of the Party. I have examined all of the documentation in support of this cost claim. The costs incurred and time spent are directly related to the Party's participation in the OEB Process referred to above.

This cost claim does not include any costs for work done, or time spent, by a person that is an employee or officer of the Party as described in section 6.05 and 6.09 of the OEB's Practice Direction on Cost Awards.

The information (fees and disbursements) filed in this cost claim is complete and accurate and in accordance with the OEB's Practice Direction for Cost Awards and Appendix A, the Cost Awards Tariff.

SUBMITTED BY
Kent Elson

DATE SUBMITTED
January 08, 2024

CASE EB-2023-0313: Facilities: Motion to Review (New): Environmental Defence Canada Inc.	COST CLAIM EB-2023-0313 : 1 : Kent Elson	INTERVENOR NAME Elson, Kent; +1 (416) 906-7305 kent@elsonadvocacy.ca	PARTICIPANT CLAIM STATUS Submitted
FILING PARTICIPANT Elson, Kent; +1 (416) 906-7305 kent@elsonadvocacy.ca	NEW PARTICIPANT No	NON-FILING PARTICIPANT F. NAME	NON-FILING PARTICIPANT L. NAME
SERVICE PROVIDER TYPE* Legal Counsel	YEAR CALLED TO BAR* 2009	COMPLETED YEARS PRACTICING/YEARS OF RELEVANT EXPERIENCE* 14	HOURLY RATE 290
HST RATE CHARGED* 13.00	CV STATUS (FOR CONSULTANT/ANALYST) CV Required	LAST CV DATE	OVERRIDE HOURLY RATE No
HST NUMBER 872151923RT0001	HEARINGS Yes	CONSULTATIONS No	DISBURSEMENTS No

HEARINGS

Hearings Hours	Hearings Subtotal (\$)	Hearings Total Tax (\$)	Hearings Total (\$)			
24.20	7,018.00	912.34	7,930.34			
<u>Name</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Sub Total</u>	<u>HST Rate</u>	<u>HST</u>	<u>Total</u>
REVIEW APPLICATION AND EVIDENCE						
Review Application and Evidence		290		13.00		
DISCOVERY						
Preparation of Interrogatories		290		13.00		
Review Interrogatory Responses		290		13.00		
Technical Conference Preparation		290		13.00		
Technical Conference Attendance		290		13.00		
Technical Conference Follow Up		290		13.00		
ISSUES LIST						
Preparation		290		13.00		
Attendance at Issues Conference		290		13.00		
INTERVENOR EVIDENCE						
Preparation		290		13.00		
Interrogatory Responses		290		13.00		
Preparation of Witness(es) for Attendance at Hearing		290		13.00		
SETTELEMENT CONFERENCE / ADR						
Preparation		290		13.00		
Attendance		290		13.00		

<u>Name</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Sub Total</u>	<u>HST Rate</u>	<u>HST</u>	<u>Total</u>
Preparation of Settlement Proposal		290		13.00		
Attendance at Presentation to Panel		290		13.00		
ORAL HEARING						
Preparation		290		13.00		
Attendance at Oral Hearing		290		13.00		
SUBMISSIONS						
Written Submissions		290		13.00		
Oral Submissions		290		13.00		
Attendance at Oral Submissions		290		13.00		
OTHER ATTENDANCE						
Other Attendance		290		13.00		
COMMUNICATION						
With Client	0.20	290	58.00	13.00	7.54	65.54
With Other Parties		290		13.00		
MOTIONS						
Preparation of Motion(s) Materials	2.00	290	580.00	13.00	75.40	655.40
Prepare Submissions on the Motion(s)	22.00	290	6,380.00	13.00	829.40	7,209.40
Attendance at Hearing on Motion(s)		290		13.00		
CONFIDENTIALITY						
Preparation of Application for Confidentiality		290		13.00		
Prepare Submissions on Confidentiality		290		13.00		
Attendance at Hearing on Confidentiality		290		13.00		
DECISION						
Review		290		13.00		
RATE ORDER						
Review		290		13.00		
Prepare Submission on Rate Order		290		13.00		
TOTAL SERVICE PROVIDER FEES						
Total Service Provider Fees:	24.20		7,018.00		912.34	7,930.34

Attachments

<u>Attachment</u>	<u>Document Type</u>	<u>Import Message</u>
ED_DocketsInvoice_20240108.pdf	Time Docket and Invoice	

Hearings, Consultations, Disbursements Attachments

<u>Attachment</u>	<u>Document Type</u>	<u>Claim Type</u>	<u>Import Message</u>
ED_DocketsInvoice_20240108.pdf	Time Docket and Invoice	Hearings	

Elson Advocacy

Invoice

Environmental Defence
33 Cecil Street
Toronto, ON
M5T 1N1

January 8, 2024

File #: 0189
Inv #: 1271

RE: Enbridge - Review Motion re Gas Expansion - EB-2023-0190

DATE	DESCRIPTION	HOURS	LAWYER
Sep 26, 2023	Prepare amended Notice of Motion to Review	1.00	KE
Sep 27, 2023	Finalize amended Notice of Motion to Review gas system expansion decision; draft correspondence to the OEB; serve and file materials	1.00	KE
Oct 19, 2023	Review procedural order; diarize deadlines; draft research questions for A. Montgomery; prepare letter to Enbridge re ongoing construction	1.50	KE
	Confer with K. Elson; legal research	1.80	AM
Oct 20, 2023	Draft update to client	0.20	KE
Oct 26, 2023	Confer with K. Elson	0.10	AM
Oct 27, 2023	Research re limits of tribunal's discretion	2.40	AM
Oct 31, 2023	Prepare submissions for motion to review gas expansion decisions	2.40	KE
Nov 1, 2023	Prepare submissions for motion to review gas expansion decisions	5.00	KE
	Research	1.90	AM
Nov 27, 2023	Research case law and text cited by other parties; draft reply submissions	4.50	KE

Nov 28, 2023	Draft submissions	5.50	KE
Nov 29, 2023	Finalize, serve, and file submissions	0.30	KE
Dec 1, 2023	Correspondence with local environmental groups	0.40	KE
Dec 5, 2023	Correspondence re correspondence from local groups	0.40	KE
Dec 12, 2023	Prepare correspondence to the OEB re improper Enbridge communications	2.00	KE
Dec 14, 2023	Review decision and order	0.60	AM
	Total Hours and Fees	31.00	\$8,174.00
	Total HST on Fees		\$1,062.62
TOTALS			
	Total Fees & Disbursements		\$8,174.00
	Total HST		\$1,062.62
	Total Fees, Disbursements, & HST		\$9,236.62
Amount Now Due			\$9,236.62
HST #	75532 3078 RT0001		
Total HST	\$1,062.62		

CASE EB-2023-0313: Facilities: Motion to Review (New): Environmental Defence Canada Inc.	COST CLAIM EB-2023-0313 : 1 : Kent Elson	INTERVENOR NAME Elson, Kent; +1 (416) 906-7305 kent@elsonadvocacy.ca	PARTICIPANT CLAIM STATUS Submitted
FILING PARTICIPANT Montgomery, Amanda; +1 (416) 906-7305 amanda@elsonadvocacy.ca	NEW PARTICIPANT No	NON-FILING PARTICIPANT F. NAME	NON-FILING PARTICIPANT L. NAME
SERVICE PROVIDER TYPE* Legal Counsel	YEAR CALLED TO BAR* 2020	COMPLETED YEARS PRACTICING/YEARS OF RELEVANT EXPERIENCE* 3	HOURLY RATE 170
HST RATE CHARGED* 13.00	CV STATUS (FOR CONSULTANT/ANALYST) CV Required	LAST CV DATE	OVERRIDE HOURLY RATE No
HST NUMBER 872151923RT0001	HEARINGS Yes	CONSULTATIONS No	DISBURSEMENTS No

HEARINGS

Hearings Hours	Hearings Subtotal (\$)	Hearings Total Tax (\$)	Hearings Total (\$)			
6.80	1,156.00	150.28	1,306.28			
<u>Name</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Sub Total</u>	<u>HST Rate</u>	<u>HST</u>	<u>Total</u>
REVIEW APPLICATION AND EVIDENCE						
Review Application and Evidence		170		13.00		
DISCOVERY						
Preparation of Interrogatories		170		13.00		
Review Interrogatory Responses		170		13.00		
Technical Conference Preparation		170		13.00		
Technical Conference Attendance		170		13.00		
Technical Conference Follow Up		170		13.00		
ISSUES LIST						
Preparation		170		13.00		
Attendance at Issues Conference		170		13.00		
INTERVENOR EVIDENCE						
Preparation		170		13.00		
Interrogatory Responses		170		13.00		
Preparation of Witness(es) for Attendance at Hearing		170		13.00		
SETTELEMENT CONFERENCE / ADR						
Preparation		170		13.00		
Attendance		170		13.00		

<u>Name</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Sub Total</u>	<u>HST Rate</u>	<u>HST</u>	<u>Total</u>
Preparation of Settlement Proposal		170		13.00		
Attendance at Presentation to Panel		170		13.00		
ORAL HEARING						
Preparation		170		13.00		
Attendance at Oral Hearing		170		13.00		
SUBMISSIONS						
Written Submissions		170		13.00		
Oral Submissions		170		13.00		
Attendance at Oral Submissions		170		13.00		
OTHER ATTENDANCE						
Other Attendance		170		13.00		
COMMUNICATION						
With Client		170		13.00		
With Other Parties		170		13.00		
MOTIONS						
Preparation of Motion(s) Materials		170		13.00		
Prepare Submissions on the Motion(s)	6.20	170	1,054.00	13.00	137.02	1,191.02
Attendance at Hearing on Motion(s)		170		13.00		
CONFIDENTIALITY						
Preparation of Application for Confidentiality		170		13.00		
Prepare Submissions on Confidentiality		170		13.00		
Attendance at Hearing on Confidentiality		170		13.00		
DECISION						
Review	0.60	170	102.00	13.00	13.26	115.26
RATE ORDER						
Review		170		13.00		
Prepare Submission on Rate Order		170		13.00		
TOTAL SERVICE PROVIDER FEES						
Total Service Provider Fees:	6.80		1,156.00		150.28	1,306.28

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Oct 19, 2023	Review procedural order; diarize deadlines; draft research questions for A. Montgomery; prepare letter to Enbridge re ongoing construction	1.50	KE
	Confer with K. Elson; legal research	1.80	AM
Oct 20, 2023	Draft update to client	0.20	KE
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	Total HST on Fees		\$1,062.62
TOTALS			
	Total Fees & Disbursements		\$8,174.00
	Total HST		\$1,062.62
	Total Fees, Disbursements, & HST		\$9,236.62
Amount Now Due			\$9,236.62
HST #	75532 3078 RT0001		
Total HST	\$1,062.62		