

VIA EMAIL and RESS

January 18, 2023

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario, M4P 1E4

Dear Nancy Marconi:

**Re: Enbridge Gas Inc. (“Enbridge Gas” or the “Company”)
Ontario Energy Board (“OEB”) File No. EB-2023-0313
Environmental Defence Motion for Review of OEB Decisions in
EB-2022-0156/EB-2022-0248/EB-2022-0249 (“ED Motion”)
Comments on Cost Claims**

Pursuant to the OEB’s Decision and Order dated December 12, 2023, Enbridge Gas has reviewed the cost claims received from Environmental Defence (“ED”), Mohawks of the Bay of Quinte (“MBQ”), and Pollution Probe (“PP”).

Enbridge Gas recommends that the OEB consider the points set out below when reviewing the cost claims made by ED.

The Value of ED’s Proposed Evidence and the Scope of ED’s Interests in Relation to the NGEPP Leave to Construct Applications

The ED Motion was for orders to vary and/or cancel four OEB decisions:

- The OEB’s interlocutory decision (dated April 17, 2023) to deny ED’s intervenor evidence request within leave to construct proceedings for three Enbridge Gas NGEPP projects¹; and,
- Three OEB decisions (all of which dated September 21, 2023) to grant leave to construct in each of the aforementioned proceedings.

The basis for the ED Motion was underpinned by:

- The purported value of ED’s proposed evidence to the leave to construct applications, which was to consist of a comparison of “the costs for an average customer in each of the relevant three communities to convert their heating to electric cold climate heat pumps instead of converting to gas.”²

¹ EB-2022-0156, EB-2022-0248 and EB-2022-0249.

² EB-2022-0156/EB-2022-0248/EB-2022-0249, ED Correspondence (March 9, 2023), p. 1.

- The scope of ED's interests in relation to the leave to construct applications, which consist of "efforts to help consumers adopt heat pumps as the home heating option" and "efforts to combat fossil fuel subsidies".³

In the four above-noted OEB decisions, the OEB made findings related to the value of ED's evidence proposal and the scope of ED's interests. More specifically, within the OEB's interlocutory decision to deny ED's intervenor evidence request, the OEB stated:⁴

Environmental Defence's proposed evidence is expected to address the potential for cold climate heat pumps to provide superior performance to natural gas service in terms of costs and risks. In accordance with the pre-existing OEB approach, **this application does not involve the OEB making a choice between the approval, or recommending the use, of such heat pumps instead of an expansion of natural gas facilities** in serving the relevant communities. **It is also questionable whether there would be a sufficient record even with the proposed Environmental Defence evidence to enable such a choice.** [Emphasis added]

Within the OEB's decisions to grant leave to construct three Enbridge Gas NGEP projects, the OEB stated:⁵

The OEB agrees with Enbridge Gas that the decision of individual consumers to opt for natural gas service is based on "all relevant factors including financial and non-financial considerations relevant to their geographic location, heating need, housing and electrical standard." In the result, **notwithstanding the potential benefits that heat pumps may afford to customers in general, the OEB finds that the best evidence in this proceeding that addresses those factors for the Project is provided by the willingness of potential customers to obtain natural gas service demonstrated by the market surveys submitted.** [Emphasis added]

Notwithstanding the OEB's findings related to the value of ED's proposed evidence and the scope of ED's interests, ED pursued the ED Motion to review the four decisions.

Within the OEB's decision to deny the ED Motion, regarding ED's interests specifically, the OEB found that the broad issues covered by ED's interests "demand careful deliberation but **extend beyond the immediate scope of these proceedings**" [Emphasis added].⁶

Enbridge Gas submits that the OEB should consider ED's cost claims in relation to the value of ED's proposed evidence and the scope of ED's interests (both of which

³ EB-2023-0313, Reply Submissions of ED (November 29, 2023), p. 3.

⁴ EB-2022-0156/EB-2022-0248/EB-2022-0249, OEB Decision on Intervenor Evidence and Confidentiality (April 17, 2023), p. 4.

⁵ EB-2022-0156, OEB Decision and Order (September 21, 2023), p. 20.

EB-2022-0248, OEB Decision and Order (September 21, 2023), p. 20.

EB-2022-0249, OEB Decision and Order (September 21, 2023), p. 19.

⁶ EB-2023-0313, OEB Decision and Order (December 13, 2023), p. 16.

underpinned the basis for the ED Motion), given the OEB's findings on these issues prior to the filing of the ED Motion and within the OEB's decision to deny the ED Motion.

ED's Inclusion of the Mohawks of the Bay of Quinte Community Expansion Project ("MBQ Project") within the ED Motion

Within ED's cost claim submission, ED references its inclusion (and subsequent withdrawal) of the MBQ Project from the ED Motion. ED suggests that, after its submissions for the ED Motion in November 2023, there was a "change in circumstance" when MBQ contacted ED and asked that the ED Motion be withdrawn with respect to the MBQ Project, resulting in ED's withdrawal request.⁷

As the record shows, there was no change in circumstance in November 2023 because ED was made aware of MBQ's position regarding ED's approach to the MBQ Project as early as March 28, 2023, six months prior to ED's inclusion of the MBQ Project within the ED Motion, filed September 27, 2023. More specifically, within MBQ's March 28, 2023 submission regarding ED's evidence proposal, MBQ stated that "the evidence of ED with respect to alternative energy sources, which has been considered by MBQ should be rejected". MBQ also stated that "MBQ objects to parties outside of the territory attempting to dictate how MBQ governs its own Territory and its stewardship of the land."⁸ Notwithstanding MBQ's requests, ED requested an order to cancel the OEB's September 21, 2023 decision to grant leave to construct the MBQ Project by including the MBQ Project within the ED Motion.⁹

ED's cost claim submission states there was almost no incremental cost to ED to include the MBQ Project within the ED Motion.¹⁰ ED's statement disregards other procedural costs caused by its inclusion of the MBQ Project within the ED Motion, including MBQ legal costs, Enbridge Gas legal costs, and OEB/OEB staff legal and administrative costs. While a moving party is entitled to pursue relief in accordance with the OEB's Rules, it should do so responsibly and recognize the adverse ripple effects that its choices could have on regulatory efficiency as well as the actual projects and communities.

Enbridge Gas submits that the OEB should consider ED's cost claims in relation to its decision to include the MBQ Project within the ED Motion.

If you have any questions, please contact the undersigned.

Sincerely,

Haris Ginis
Technical Manager, Leave to Construct Applications

⁷ EB-2023-0313, ED Cost Claim Submission (January 8, 2024), p. 1.

⁸ EB-2022-0248, MBQ Submission re: ED Intervenor Evidence Proposal (March 28, 2023).

⁹ EB-2023-0313, ED Amended Notice of Motion (September 27, 2023), pp. 1 – 2.

¹⁰ EB-2023-0313, ED Cost Claim Submission (January 8, 2024), p. 2.

c.c. Charles Keizer (Torys LLP, Enbridge Gas Counsel)
Arlen Sternberg (Torys LLP, Enbridge Gas Counsel)
Zora Crnojacki (OEB Staff)
Intervenors (EB-2023-0313)