

# Elson Advocacy

January 31, 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: EB-2022-0157 – Enbridge Gas Inc. – Panhandle Regional Expansion Project**

I am writing on behalf of Environmental Defence to request leave to file a response to Enbridge's reply submissions. We have also provided the content of that response for the OEB's consideration should leave be granted.

## **Leave to respond**

Environmental Defence should be granted leave to file a response to Enbridge's Reply Submissions because the OEB would benefit from hearing a response to issues and evidence that Enbridge inappropriately raised in its reply instead of its argument-in-chief. The Ontario Court of Appeal has held that parties should not be allowed to submit reply on points "which could have been made in the moving party's initial factum."<sup>1</sup> This is not a mere technicality. It is essential that the applicant's arguments be made in the argument-in-chief wherever possible so that intervenors can respond and the OEB can consider all viewpoints.

In this case, the applicant has not done that. Instead, Enbridge held back its submissions on key issues for its reply. For instance, it did not even mention contributions in aid of construction (CIACs) in its argument-in-chief, despite this being perhaps the most important issue in this proceeding. Enbridge also raised new critiques and mischaracterizations of Dr. McDiarmid's evidence that could have and should have been raised in its argument-in-chief.

This is a problem for fairness, but also for the quality of the decision-making process. The OEB benefits from hearing from a variety of viewpoints on the key issues. If the applicant's key points are held back until reply, the OEB will not hear intervenor responses on those key points (except to the extent that intervenors are sometimes able to anticipate those points). In EBO 134, the OEB noted that "[t]he greater the number of interests that are represented at a hearing, the more confidence the Board can have in its judgement regarding the public interest."<sup>2</sup> That important goal is prejudiced when arguments are held back to be raised in reply.

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<sup>1</sup> *Dennis v. Ontario Lottery and Gaming Commission*, [2012 ONCA 368](#), at para 8.

<sup>2</sup> EBO 134, s. 5.20.

Enbridge's reply also refers to seven documents that are not on the record without even asking the OEB for leave to submit evidence at this late stage.<sup>3</sup> It is bad enough to rely on evidence that is not on the record in an argument-in-chief. It is even more inappropriate to do so in a reply, as the parties will have no chance to respond. Furthermore, these documents are not relied on for simple or self-evidence points. They are relied on to support Enbridge's position on hotly contested issues, and in some cases they are seriously mischaracterized.

In light of the above, we request leave to submit the following response.

### **Evidence of Dr. McDiarmid**

Enbridge states that "Dr. McDiarmid confirmed at the hearing that the removal of the current Federal Carbon Charge would result in natural gas being more cost-effective than electric heat pumps for the average residential energy consumer, based on her analysis."<sup>4</sup> That is untrue. Dr. McDiarmid merely confirmed that Enbridge had updated the correct cells in her spreadsheet.<sup>5</sup> Enbridge did not actually ask Dr. McDiarmid if gas heating would be cheaper than heat pumps without the carbon price. Even without the carbon price, heat pumps are still cheaper to operate than gas furnaces, resulting in lower energy bills, according to the spreadsheet.<sup>6</sup> Furthermore, Dr. McDiarmid's analysis was conservative in multiple ways, including the following, each of which would improve the full lifetime cost-effectiveness of heat pumps if adjusted:<sup>7</sup>

- The Panhandle region is warmer than the average for the region that was modelled, so actual efficiency levels for heat pumps will be greater than those that were modelled;
- New construction homes (which make up 95% of the purported stage 2 benefits) likely have lower up-front installation costs than those modelled;
- Ground source heat pumps are even more efficient and cost-effective than the air-source heat pumps that were modelled;
- The federal grants and interest free loans for heat pumps were not accounted for in the modelling;
- No carbon price increases were assumed after 2030 in the modelling; and
- Heat pump performance, capacity, efficiency, and cost were held constant in the modelling even though they are all likely going to get better with time.<sup>8</sup>

Furthermore, when testifying to the substance of the carbon price issue, Dr. McDiarmid stated as follows:

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<sup>3</sup> Enbridge Reply Submissions, footnote 35, 36, 37, 38, 43, 53, and 54.

<sup>4</sup> Enbridge Reply, para. 27.

<sup>5</sup> Transcript Vol. 1, p. 101 ([link](#)).

<sup>6</sup> ED\_EvdAttachment2Updated\_20231018 - no carbon tax.XLSX ([link](#)) (see Output Tab, Cell B27).

<sup>7</sup> Transcript Vol. 1, pp. 53-54 ([link](#)); McDiarmid Presentation, p. 6 ([link](#)).

<sup>8</sup> *Ibid.*

“I am not sure that it's fair to compare current carbon price to no carbon price, given that buildings are the third largest source of emissions in Canada. Any federal government that opts to eliminate the carbon tax will have to bring something else in, in order to bring down emissions from the building sector, if we are going to meet our long-term climate targets. And we don't know what that would be, but it is likely to affect the economics here.”<sup>9</sup>

The heat pump evidence is relevant to Enbridge’s 40-year cost-benefit analysis, both for the stage 2 analysis and the proposal to include 40 years of revenue in the stage 1 calculations. Over a 40-year period, policies will come and go. But it is certain that carbon must be removed from building heating. Therefore, financial decisions should not be based on the unlikely assumption that heating with fossil gas will continue in perpetuity without policy or market responses. Although policy could, say, replace fossil gas with renewable natural gas, that would only serve to improve the economics of heat pumps for customers by pushing the price of gas heating even higher.

Emissions from buildings must be eliminated steadily over the next two or so decades. A fully forward-looking analysis would compare the cost of heating with heat pumps and heating with decarbonized gas, as Environmental Defence’s evidence did in Enbridge’s rebasing case. But *Enbridge* has the evidentiary burden in this case, and it has not established that gas heating is or will be the cheapest way to heat homes, either now or on average over the project lifetime, as necessary to generate the purported stage 2 benefits.

### **Revenue horizon risk**

Although it was clear from the hearing that parties would be arguing for a 20-year horizon for stage 1, Enbridge held back its arguments on these points, disregarding the issue in its argument-in-chief. In reply, it noted that the 20-year horizon from EBO 188 is inappropriate because it pertains to “the particular risk of a connection customer” whereas EBO 134 projects serve a wider area, and are therefore more diversified and less risky.

However, this is a highly superficial analysis that fails to grapple with the actual risk profile underlying this project. EBO 188 is often applied to larger expansions with diversified customers bases, not only for single-customer projects, and 20-year periods are still applied to industrial loads for those projects. In the panhandle regional expansion project, almost all of the incremental demand is from two sectors – power generation and greenhouses. Both are highly exposed to the energy transition and their future over a 40-year period is not certain. In reality, there is very little diversity of risk in the sources of the project demand – considerably less than many EBO 188 projects that serve a variety of sectors.

### **Viability of electrification**

Enbridge argues that the electrification of buildings is not viable and unlikely to occur because it will be too difficult to expand the electricity system, relying on multiple new documents that

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<sup>9</sup> Transcript Vol. 1, p. 101 ([link](#)).

were not entered into evidence in the hearing, let alone introduced properly through an electricity planner.<sup>10</sup> This is relevant to whether a 20- or 40-year revenue horizon is appropriate for the stage 1 analysis. There is no basis for Enbridge's contentions.

Enbridge's selective references to IESO materials<sup>11</sup> cannot be used to support a 40-year horizon. Those materials are not part of the evidentiary record. In addition, as noted by the Panel Chair during cross-examinations of the Enbridge witnesses, those witnesses are not electricity planners and cannot speak to electricity planning questions.<sup>12</sup>

Furthermore, Enbridge relies on the Electrification and Energy Transition Panel's *Ontario's Clean Energy Opportunity* report.<sup>13</sup> However, that report actually supports the intervenor position that a shorter horizon should be used for stage 1. For instance, it states:

[E]merging evidence shows that it is unlikely the natural gas system can be fully decarbonized and continue to deliver cost-effective building heat. The development of regulatory frameworks and the evolution of natural gas infrastructure will need to align with the province's overarching clean energy economy commitment and protect customers as the role of natural gas changes in the province. A failure to align these regulatory frameworks with government's overarching policy commitments could result in significant cost hazards for customers or threats to overarching government policy commitments and an effective, orderly and well-aligned transition to a clean energy economy.

...

The speed at which customers would change their heating source is uncertain and dependent on a large number of individual factors, such as equipment age and personal preferences and values, as well as system-level and policy factors, such as cost development, availability of equipment and qualified technicians, and supportive policies and incentives. Nonetheless, this could lead to many customers disconnecting from the natural gas system absent any personal motivation to lower their carbon footprint. As a result, there is a real risk of stranding assets in home heating and the gas distribution grid over the medium to long-term, with significant risk to customers, investors and public finances. As more customers exit the natural gas grid to adopt electric heating, those customers who are least able to afford to electrify could be forced to pay higher and higher proportions of the network cost to keep the system running safely.

...

In either case, it is in the interest of the province, for the purpose of customer protection, to ensure that the regulatory mechanisms for the governance of the natural gas grid are aligned with a range of plausible outcomes, notably those that pose the greatest risks to customers.<sup>14</sup>

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<sup>10</sup> Enbridge Reply, paras. 28-31, 89, & 102.

<sup>11</sup> Enbridge Reply, footnotes 43 to 53.

<sup>12</sup> Transcript Vol. 1, p. 125 ([link](#)).

<sup>13</sup> Enbridge Reply, para. 31.

<sup>14</sup> Electrification and Energy Transition Panel, *Ontario's Clean Energy Opportunity* ([link](#)).

The panel also recommends that the provincial government “explore mechanisms to support broad adoption of fuel switching, decarbonization and supportive technologies such as electric vehicles, storage and heat pumps.”<sup>15</sup>

The electrification and energy transition panel report stands for the opposite conclusion that Enbridge cites it for. Its conclusions support a shorter stage 1 revenue horizon. It notes that the speed of fuel switching is uncertain, but that regulatory mechanisms must be aligned with the outcomes that “pose the greatest risks to customers.” This makes a great deal of sense. Although it is not certain whether a 40-year horizon will turn out to be too long, there is a significant risk of that, and therefore a 20-year horizon for the stage 1 analysis is the prudent course.

Yours truly,



Kent Elson

cc: Parties in the above proceeding

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<sup>15</sup> Electrification and Energy Transition Panel, *Ontario's Clean Energy Opportunity* ([Recommendation 27](#)).