TORYS LLP

79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada
P. 416.865.0040 | F. 416.865.7380
www.torys.com

Charles Keizer
ckeizer@torys.com
P. 416.865.7512

February 5, 2024

RESS & EMAIL

Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, ON M4P 1E4

Attention: Nancy Marconi, Registrar

Dear Ms Marconi:

Re: Enbridge Gas Inc. – Panhandle Regional Expansion Project (EB-2022-0157) – Response to Environmental Defence

This letter is in response to Environmental Defence's ("ED") January 31, 2024, correspondence in which ED requested leave to file a response to Enbridge Gas Inc.'s ("Enbridge Gas") reply submissions. ED's further submissions were provided together with its request.

Enbridge Gas submits that ED's request should be denied and that its further submissions should be given no weight. ED asserts that Enbridge Gas "held back" submissions on certain issues until its reply and that those submissions should have been in its Argument-in-Chief ("AIC"). In effect, ED wrongly asserts that Enbridge Gas has attempted to split its case. According to ED, the issues in question related to the uses of a contribution in aid of construction ("CIAC"), references to Dr. McDiarmid's evidence on the carbon charge, the applicable revenue horizon and references made to certain documents related to electrification. Contrary to ED's assertions, Enbridge Gas has submitted a proper reply with respect to each of the above issues.

As an applicant, whose interests are directly affected by the outcome of the application, Enbridge Gas is owed a high degree of procedural fairness, including the right to respond to the case being made against it. ED put forward its case and arguments by way of its responding submissions. The OEB's process has no provision for an intervenor to file the equivalent to a pleading or response to the application prior to delivering its argument. Other than the evidence of Dr. McDiarmid (which was appropriately responded to in the AIC) there was no other evidence led by ED or any other Intervenor. The full understanding of the case that the Applicant must meet is not known until intervenor submissions are filed. It was therefore entirely appropriate for Enbridge Gas to respond to those issues and arguments in its reply submissions. This is the well-established practice in applications before the OEB and this is what Enbridge Gas has done in its Reply.

ED ignores this key aspect and has instead incorrectly relied upon an Ontario Court of Appeal

decision which does not stand for the proposition asserted by ED. That case relates to a very different circumstance in which the court addressed an express rule of Civil Procedure that specifically deals with when a reply factum can be delivered on a motion for leave to appeal to the Court of Appeal[1].

The proposition asserted by ED would require the Applicant to guess or speculate as to the nature and framing of the argument an opposing intervenor would make and require those arguments be made in advance in the AIC. This is unfair since the Applicant would be compelled to make its submissions without a clear understanding of the case it would have to meet, which is only fully provided for the first time in the opposing Intervenors' submissions.

With respect to the CIAC issue, Enbridge Gas has consistently maintained through the proceeding, both in writing and orally, that (i) EBO 134 should be applied, (ii) it does not provide for a CIAC and (iii) even if a CIAC were permissible, it should not apply to the Project since it is not possible to appropriately calculate a CIAC. It is important to note that the presiding Panel appropriately ruled during the proceeding that Enbridge Gas has made its position known and that the Panel expected Intervenors to provide approaches that they think are appropriate.[2] Enbridge Gas cannot respond to aspects that have not been articulated by parties and therefore, appropriately responded to intervenors submissions in reply. How opposing Intervenors would interpret EBO 134 or how those intervenors would characterize the CIAC or its potential calculations were unknown at the time of the AIC. It is not for the Applicant to guess the points of argument of opposing partie in its AIC.

Regarding Enbridge Gas's submissions related to Dr. McDiarmid, ED takes issue with Enbridge Gas's submission that Dr. McDiarmid's analysis confirms that with the removal of the current Federal Carbon Charge, natural gas would be more cost effective than electric heat pumps for the average residential energy consumer.[3] While ED may not agree with Enbridge Gas's interpretation of Dr. McDiarmid's evidence, the submissions made by Enbridge Gas are appropriate reply submissions.

Enbridge Gas did not "hold back" as asserted by ED as the AIC clearly stated the following:

> ***In addition, Dr. McDiarmid readily acknowledges that the pace of energy transition will be driven by the changes in public policy and that those public policy changes will have a direct impact on her analysis. This was particularly noted by the sensitivity of her analysis to changes in carbon pricing. No one can reasonably predict the course of change in energy transition or the policy changes that may be made either hastening or slowing its progress.*** Against this backdrop, Dr. McDiarmid's analysis is no more than a theoretical analysis based on conjecture and should not form the basis of OEB's determination of the public interest of a critical and major infrastructure project.[4]

In response to ED's submissions related to energy transition, Enbridge Gas relied on the adjustments made to Dr. McDiarmid's model for changes in carbon pricing. In Enbridge Gas's view Dr. McDiarmid agreed with how the adjustments were made and the results arising from

---

[1] Rule 61.03.1(11) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194

[2] Hybrid Hearing Transcript, Vol. 2, 187-188

[3] Enbridge Gas's submission related to overall cost effectiveness whereas ED's related to operational cost only.

[4] AIC, para. 86

those changes. On this basis, relying on Dr. McDiarmid's model for the cost effectiveness of heat pumps relative to natural gas, natural gas was more cost effective without the carbon charge. The model speaks for itself. ED may not like this conclusion, but Enbridge Gas submits that it is an appropriate one to make in both the AIC and the Reply. In its January 31 letter, ED attempts to provide justification for this result by arguing that if the carbon charge were to change, something else would take its place. This is pure speculation as there is no factual basis in this regard.

ED also asserts that Enbridge Gas did not in its AIC deal with a change in the revenue horizon from 40 years to 20 years and should have done so because it was allegedly clear from the hearing that the parties would argue for a 20-year revenue horizon. Enbridge Gas has been clear throughout the proceeding, including its AIC, that EBO 134 in accordance with the Facilities Handbook should apply, which is inclusive of a 40-year revenue horizon. As such a 20-year revenue horizon or otherwise was not part of Enbridge Gas's case, and, furthermore, there was no basis to know what parties would submit with respect to the revenue horizon. ED's assertion that this was clear from the hearing is untrue. A 20-year revenue horizon was only referred to by intervenors on two occasions during the hearing and neither provides clarity as to the case that Enbridge Gas was required to meet in this regard. In particular, this was exemplified by the exchange with Energy Probe:

> MR. LADANYI: So, here you have large volume customers but you did your analysis entirely on 40 years; why didn't you use 20 years? Or you were not even referring itself to 188, you say you can pick any number of years is that what you're saying?
>
> MR. SZYMANSKI: We have used a 40-year time horizon consistent with past projects that have been approved by the Board and which reflects the, I guess, the current closer represents the current life span of the assets.
>
> MR. LADANYI: So, it's the assets not the customers. So, the reason I think and I don't want to have a debate with you but the reason why the Board's made this distinction between large-volume customers and general service customers is because the Board would have been concerned about the longevity of the large-volume customers businesses go out of business they don't need service anymore, that's why it's 20 years. They are much riskier than residential customers; would you not agree with me?
>
> MR. SZYMANSKI: Sorry, one moment, please. Mr. Ladanyi, this goes toward, I guess, the characteristics or the difference between a distribution and a transmission system being the nature of this transmission system serving a broad geographic area. If you had one customer leave the system the likelihood of that capacity being utilized by somebody else in the future is extremely high.
>
> MR. LADANYI: ***That's certainly your opinion, I may not disagree with that, you understand that.***[5]

The other occasion[6] involved the clarification of an interrogatory response related to the

---

[5] Hybrid Hearing Vol. 2, p. 123-124

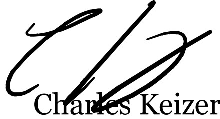
[6] Commission Moran asked clarifying questions in this regard but given the it was from the Panel was not seen as a party's position.

calculation of a 20-year revenue horizon.[7] Based on ED's January 31 letter, Enbridge Gas would also have to speculate in its AIC as to the positions of parties in this regard and any submissions that they would make.

In its reply submissions Enbridge Gas made reference to the IESO's *Pathways to Decarbonization* and *Submission on the Proposed Clean Electricity Regulations* as well as the Report of the Electrification and Energy Transition Panel. ED objects to the reference to these reports by Enbridge Gas in reply and not in the hearing. However, these references are from authoritative sources making reference to matters well within the expertise of the OEB and which the OEB is capable of taking notice and applying appropriate weight to them in its discretion.[8]

As a result of the foregoing, Enbridge Gas submits that the OEB should reject ED's request for further reply and give no weight to the submissions included in its January 31 letter.

Yours truly,



Charles Keizer

CK

40832126.2

[7] Hybrid Hearing Vol. 2, p. 179

[8] *Statutory Powers Procedure Act*, section 16