



Ontario
Energy
Board | Commission
de l'énergie
de l'Ontario

DECISION ON INTERVENOR EVIDENCE, CONSOLIDATION OF NATURAL GAS EXPANSION PROGRAM-RELATED PROCEEDINGS, TECHNICAL CONFERENCE, CONFIDENTIALITY AND PROCEDURAL ORDER NO. 2

EB-2022-0111

ONTARIO ENERGY BOARD

**Application for leave to construct natural gas pipeline and
associated facilities in the City of Kawartha Lakes (including
Bobcaygeon) and Township of Cavan-Monaghan**

BEFORE: Robert Dodds
Presiding Commissioner

Michael Janigan
Commissioner

David Sword
Commissioner

February 20, 2024

TABLE OF CONTENTS

1	OVERVIEW	1
2	PROCESS.....	3
3	DECISION	7
3.1	ENVIRONMENTAL DEFENCE’S PROPOSED EVIDENCE	7
3.2	CONSOLIDATION OF THE NGEP APPLICATIONS	19
3.3	TECHNICAL CONFERENCE AND/OR ORAL HEARING REQUESTS	22
3.4	CONFIDENTIALITY REQUEST.....	24
3.5	ABEYANCE	24
4	ORDER	25

1 OVERVIEW

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) under sections 90 and 97 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), for an order granting leave to construct approximately 41 kilometres of natural gas pipeline in the City of Kawartha Lakes (including Bobcaygeon) and Township of Cavan-Monaghan. The proposed pipeline will supply natural gas to approximately 3,700 new customers who currently do not have access to natural gas service. Enbridge Gas also applied to the OEB for approval of the form of land-use agreements it offers to landowners affected by the routing and construction of the project.

The project was selected to be eligible to receive funding assistance as part of Phase 2 of the Government of Ontario's Natural Gas Expansion Program (NGEP), which provides financial support to help utilities expand natural gas distribution into communities that are not currently connected to the natural gas system.

During the course of this proceeding, the approved intervenors, Environmental Defence and Pollution Probe, made several requests. Environmental Defence requested:

- Approval to file heat pump evidence, demonstrating the cost-effectiveness of heat pumps relative to natural gas
- Approval to file survey evidence to test the survey and customer connection forecast evidence submitted by Enbridge Gas, based on a community survey that Environmental Defence would conduct in the community of Bobcaygeon
- That the OEB consolidate the hearing of the four Enbridge Gas NGEP-related applications (Bobcaygeon, Sandford, Eganville, Neustadt) and the EPCOR Natural Gas Limited Partnership (EPCOR) Brockton application¹ (which has now been withdrawn by EPCOR), given the overlap in the issues and evidence
- That a joint technical conference be held for the (then) five NGEP-related applications

Pollution Probe supported Environmental Defence's evidence proposal, and requested a short technical conference and/or oral hearing.

¹ EB-2022-0246

Enbridge Gas requested confidential treatment of certain information in one of its responses to OEB staff interrogatories on the basis that it is personal information.

For the reasons that follow, the OEB denies the requests made by Environmental Defence and Pollution Probe and approves Enbridge Gas's request for confidential treatment of certain personal information.

2 PROCESS

The OEB first issued a Notice of Hearing on May 27, 2022, after Enbridge Gas filed its application on May 3, 2022. On July 5, 2022, Enbridge Gas filed a letter requesting an adjournment of the proceeding to no later than October 31, 2022. Enbridge Gas stated that given the current economic and inflationary environment, it believed that updates to its market analysis and surveys for the project must be completed to provide an appropriate basis for the customer attachment forecasts filed in support of the application.

On July 6, 2022, the OEB issued a letter stating that it accepted the reasons set out by Enbridge Gas regarding its request for an adjournment and placed the application in abeyance until Enbridge Gas filed its updated evidence with respect to the customer attachment forecast for the project. Enbridge Gas filed a letter with the OEB on October 31, 2022 to request that the OEB continue to hold the application in abeyance until February 28, 2023 for the completion of its evidence update. On February 28, 2023, Enbridge Gas again requested that the OEB continue to hold the application in abeyance until no later than June 30, 2023, by which time it expected to file any necessary evidence updates. Enbridge Gas filed an updated application on June 14, 2023. The OEB issued an updated Notice of Hearing on July 5, 2023.

Environmental Defence, Federation of Rental-housing Providers of Ontario (FRPO) and Pollution Probe applied for intervenor status and cost eligibility and were approved as intervenors. In its letter of intervention, Environmental Defence stated that it wished to file heat pump evidence in this proceeding. Environmental Defence also filed an intervention form noting that the heat pump evidence it sought to file was as described in its letter of June 21, 2022. As part of their intervention requests, Environmental Defence and FRPO requested that the OEB provide for a technical conference.

In Procedural Order No. 1, issued August 14, 2023, the OEB stated that it would decide on Environmental Defence's request to file evidence, and any process associated with that request, at a later date. The OEB also stated that it would make its determination on the request for a technical conference after the responses to interrogatories were filed. The OEB provided for the filing of interrogatories on Enbridge Gas's evidence by OEB staff and intervenors and for responses by Enbridge Gas. The OEB also provided for the filing of comments on the need for a technical conference.

OEB staff and intervenors filed interrogatories on September 6, 2023 and Enbridge Gas filed its interrogatory responses on September 20, 2023. OEB staff and intervenors filed

comments on the need for a technical conference on September 22, 2023 and Enbridge Gas filed a response to these comments on September 26, 2023.

On September 27, 2023, Environmental Defence filed a Motion to Review² the OEB's decisions (relating to the admissibility of intervenor evidence and to the merits of the applications) in the proceedings for the following Enbridge Gas community expansion projects:

- Selwyn
- Mohawks of the Bay of Quinte and Shannonville
- Hidden Valley Community³

On October 11, 2023, the OEB issued a letter placing this proceeding in abeyance pending the OEB's determination on the Motion to Review, stating that the matters cited in the Motion to Review raise issues that are relevant to this proceeding and that it would be prudent to provide directions on the next steps in this proceeding after the OEB has considered the Motion to Review.

On December 4, 2023, Environmental Defence withdrew the part of its motion relating to the Mohawks of the Bay of Quinte and Shannonville project and the OEB confirmed withdrawal of this portion of the motion.

The OEB issued a decision⁴ on December 13, 2023 denying the remainder of Environmental Defence's motion with respect to the other two community expansion projects noting that the OEB's orders approving the three projects remain in full force and effect.

On December 14, 2023, Environmental Defence filed a letter with respect to the Enbridge Gas NGEF applications being heard by the OEB at that time (Bobcaygeon, Sandford, Eganville, Neustadt) and the EPCOR Natural Gas Limited Partnership

² EB-2023-0313 Motion to Review and Vary OEB Decisions in EB-2022-0156/EB2022-0248/EB-2022-0249

³ EB-2022-0156 – Selwyn Community Expansion Project; EB-2022-0248 – Mohawks of the Bay of Quinte and Shannonville Community Expansion Project; EB-2022-0249 – Hidden Valley Community Expansion Project

⁴ EB-2023-0313 Decision on Motion to Review and Vary OEB Decisions in EB-2022-0156/EB2022-0248/EB-2022-0249

(EPCOR) Brockton application,⁵ which has now been withdrawn by EPCOR, proposing that:

- The OEB consolidate the hearing of these natural gas expansion projects given the overlap in the issues and evidence
- A joint technical conference for these projects be convened
- Environmental Defence be allowed to file evidence with respect to the Enbridge Gas natural gas expansion projects based on community surveys that it will conduct (survey evidence)

Enbridge Gas filed a response on December 21, 2023 stating that the OEB should reject Environmental Defence's proposals.

On December 28, 2023, the OEB issued a letter seeking clarification from Environmental Defence, by January 11, 2024, on the type of evidence it is proposing, the timing and costs for this evidence, details on the information that it would include in its survey and Environmental Defence's expectations regarding the continuation of the existing level of heat pump subsidies and the federal charge on carbon until 2030.

Environmental Defence filed responses to the OEB's questions on January 11, 2024.

On January 18, 2024, Enbridge Gas filed a letter addressing Environmental Defence's January 11, 2024 response letter to the OEB stating that Environmental Defence's request to file survey evidence should be denied. Environmental Defence filed a further response letter on January 18, 2024 contesting Enbridge Gas's comments in its January 18, 2024 letter.

On January 19, 2024, Environmental Defence filed an additional letter regarding its proposed survey evidence, requesting that Enbridge Gas confidentially share information with the public opinion research firm that it intends to retain in order to reduce the time and cost of the surveys it wishes to conduct. Enbridge Gas filed a response to Environmental Defence's request on February 2, 2024.

⁵ EB-2022-0246

The OEB has reviewed the requests, responses and comments provided by OEB staff, intervenors and Enbridge Gas. This Decision addresses the following matters:

- Environmental Defence's proposed evidence
- Consolidation of the four Enbridge Gas NGEPA applications (Bobcaygeon, Sandford, Neustadt, and Eganville)
- Requests for a technical conference
- Pollution Probe's request for an oral hearing
- Enbridge Gas's request for confidentiality

3 DECISION

3.1 Environmental Defence's Proposed Evidence

On June 21, 2022, Environmental Defence filed a letter indicating that it proposed to file evidence that will compare the costs, for an average customer in the Bobcaygeon area, to convert their existing heating systems to electric heat pumps relative to the cost of converting to natural gas. Environmental Defence stated that its proposed heat pump evidence is relevant to the customer additions forecast presented by Enbridge Gas, as customer decisions will be influenced to a large degree by the relative cost-effectiveness of converting to a gas furnace versus a high-efficiency electric heat pump. Environmental Defence stated the customer additions forecast underpins the project economics and the financial risks to existing customers are significant if the customer additions and related revenue forecasts do not materialize. In its intervention form filed on July 25, 2023, Environmental Defence reiterated that it wished to file heat pump evidence, as described in its letter of June 21, 2022.

Environmental Defence stated that for the Bobcaygeon project to break even, the project must generate over \$142 million in distribution revenues between 2024 and 2063. Environmental Defence further noted that a large proportion of that revenue (\$120 million) is forecast to be generated in years 11 to 40, after the rate stability period (RSP)⁶, at which point any shortfalls are more likely to fall on existing customers.⁷

In a letter filed on September 21, 2023, Pollution Probe supported Environmental Defence's requests to file heat pump evidence, stating that this evidence relates directly to issues in scope for this proceeding such as project economics, attachment forecast and alternatives. Pollution Probe submitted that there is insufficient information in the application to objectively indicate to the OEB what the likely energy and equipment choices will be made by consumers and businesses in this community. Pollution Probe also argued that over-estimation of the natural gas penetration estimate in comparison to relevant modern consumer choices would provide an inaccurate analysis for purposes of the required OEB EBO 188 assessment and could result in increased rate payer risks related to project economics and stranded assets.⁸

⁶ The rate stability period is a 10-year period that commences when the project is placed into service during which Enbridge Gas will bear the risk of the project customer attachment and capital expenditure forecast

⁷ Environmental Defence Letter, January 11, 2024

⁸ Pollution Probe letter, September 21, 2023, p.1

Enbridge Gas filed a letter on August 8, 2023 noting that Environmental Defence's proposed evidence appears to be consistent with Environmental Defence's evidence proposal submitted for three similar Enbridge Gas NGEF funded projects, namely, the Selwyn, Mohawks of the Bay of Quinte and Shannonville and Hidden Valley community expansion projects. Enbridge Gas stated that the OEB had denied Environmental Defence's evidence proposal in the three proceedings and submitted that the evidence proposal should be denied by the OEB in this proceeding on the same basis as in the other three proceedings.

On August 14, 2023, Environmental Defence filed a response to Enbridge Gas's August 8, 2023 letter arguing that the OEB's decision on Environmental Defence's evidence proposal in the three proceedings implicitly acknowledged the relevance of this information in stating that the cost-effectiveness of heat pumps and the potential impact on project economics may be explored through interrogatories or by further discovery or follow-up as the OEB may require. Environmental Defence stated that Enbridge Gas subsequently filed heat pump evidence in the three proceedings that Environmental Defence considers highly biased and unreliable. Environmental Defence also argued that the surveys used by Enbridge Gas are highly flawed because they fail to advise customers of critical facts before asking whether they wish to switch to gas. As part of its letter, Environmental Defence provided details regarding why it believes Enbridge Gas's heat pump evidence is biased as well as details on the flaws in the Enbridge Gas survey methodology. Environmental Defence stated that it would provide evidence on the actual underlying cost effectiveness of heat pumps, the current level of knowledge among customers, and the likely future level of knowledge.

In a subsequent letter filed on December 14, 2023, Environmental Defence requested permission to file survey evidence. Environmental Defence filed a letter on January 11, 2024, in response to OEB clarification questions, confirming that it continues to seek to file heat pump evidence (as summarized above and set out in its June 21, 2022 letter) but that the proposed evidence is reduced in scope and cost given that Enbridge Gas has submitted additional evidence relating to the comparison of heat pump and gas heating costs in three expansion projects (Selwyn; Mohawks of the Bay of Quinte and Shannonville; and Hidden Valley) and the Ministry of Energy has developed its own analysis.

With respect to the survey evidence, Environmental Defence stated that it wishes to retain a public opinion research firm to conduct community surveys to gauge the likely number of connections and to test the survey and customer connection forecast

evidence submitted by Enbridge Gas. Environmental Defence stated that its survey would be similar to Enbridge Gas's survey but would correct a number of methodological errors, identifying several alleged deficiencies in the Enbridge Gas survey, including potential misleading information in the survey script.

Enbridge Gas filed a letter on December 21, 2023 stating that the OEB should reject Environmental Defence's proposal to file survey evidence, noting the lateness of the request and stating that this is not likely to provide more accurate information regarding consumer and community interest in natural gas system expansion than that of the Government of Ontario's and Enbridge Gas's information.

Enbridge Gas further stated that the projects and their associated communities were selected by the Ministry of Energy to receive funding through Phase 2 of the Government's NGEP and, as part of that process, were specifically assessed by the Government and the OEB among hundreds of other applications related to other projects and communities. Enbridge Gas submitted that the granting of NGEP funding was rooted in extensive community consultation and support, together with local, geo-targeted market analysis to assess and substantiate consumer interest in natural gas. Enbridge Gas also submitted that the OEB has accepted Enbridge Gas's survey methodologies (and described no errors, inaccuracies or bias as suggested by Environmental Defence), referencing the OEB's decisions approving the Selwyn, Mohawks of the Bay of Quinte and Shannonville, and Hidden Valley applications.

Enbridge Gas also stated that if the OEB were to permit Environmental Defence's proposed survey evidence, it should ensure that the evidence is produced objectively (with the intention of supporting the OEB's assessment of the community expansion applications beyond the information that is already available to it) rather than to promote Environmental Defence's interests (i.e., the promotion of electric heat pumps and the opposition to natural gas expansion projects).

Enbridge Gas submitted that the OEB should consider the material delay that would arise from admitting Environmental Defence's evidence resulting from the preparation, execution and testing of the evidence, all of which may delay the proceedings by several months. Enbridge Gas further submitted that, if the OEB permits Environmental Defence to file its proposed evidence, Enbridge Gas requires the opportunity for discovery and to file responding evidence.

On January 18, 2024, Enbridge Gas filed another letter addressing Environmental Defence's January 11, 2024 response letter to the OEB, reiterating that the proposed

survey evidence of Environmental Defence should be denied for the reasons laid out in its December 21, 2023 letter, and additionally arguing that Environmental Defence's evidence will omit information on factors that could impact the cost-effectiveness of heat pumps, such as the possible end of carbon pricing.

On January 18, 2024, Environmental Defence filed a further response to Enbridge Gas's January 18, 2024 letter arguing that Enbridge Gas's assertions that heat pumps are no longer cost effective without carbon pricing is not correct as Enbridge Gas has misunderstood the evidence of Environmental Defence filed in a different proceeding (Panhandle Regional Expansion Project⁹) and misapplied it in this proceeding. Environmental Defence argued that with the inclusion of the system expansion surcharge for the NGEF projects, which does not apply in the Panhandle Regional Expansion Project, heat pumps continue to be cost-effective in these gas expansion communities even without a price on carbon. Environmental Defence also responded to Enbridge Gas's allegation that its survey would not be aimed at accurately assessing consumer interest in attaching to the natural gas system. Environmental Defence argued that its survey would be squarely aimed at accurately assessing consumer interest in attaching to the natural gas system and that is what it has advised the OEB. Environmental Defence stated that those would be the instructions to the experts, along with the requirement to conduct the survey and prepare the evidence in a way that is fair, objective and non-partisan.

Environmental Defence further argued that Enbridge Gas's critique of its proposed survey evidence is entirely speculative and unfair given that Environmental Defence has not prepared the survey script and its critique should be reserved for argument and is not a valid reason to disallow an opportunity to file evidence.

On January 19, 2024, Environmental Defence filed an additional letter regarding its proposed survey evidence, requesting that Enbridge Gas confidentially share information with the public opinion research firm that it intends to retain in order to reduce the time and cost of the surveys it wishes to conduct. The information requested pertains to property addresses and contact information for: (a) properties that could be connected to the new pipeline; and (b) individuals that responded to Enbridge Gas's surveys.

⁹ EB-2022-0157, Panhandle Regional Expansion Project

Enbridge Gas filed a response to Environmental Defence's request on February 2, 2024 stating that it cannot share the property address information used for its earlier surveys because it was directly derived from the Municipal Property Assessment Corporation, and it does not have the rights to distribute such information to Environmental Defence and/or its vendor. Enbridge Gas stated that it can provide maps which can be used by Environmental Defence and/or its vendor to derive the addresses for properties that could connect to the four NGEF projects (Bobcaygeon, Sandford, Eganville, Neustadt). Enbridge Gas further stated it cannot provide the requested information regarding survey respondents because the identities of survey respondents were not tracked.

Related OEB Decisions

The OEB notes that Environmental Defence has previously sought to file evidence similar to the heat pump evidence that it proposed to file in the current proceeding and the OEB has made prior determinations on that evidence.¹⁰

On April 17, 2023, the OEB issued a decision denying Environmental Defence's request to file heat pump evidence in three Enbridge Gas NGEF applications (Selwyn, Mohawks of the Bay of Quinte and Shannonville, and Hidden Valley) (Decision on Intervenor Evidence). In the Decision on Intervenor Evidence, the OEB stated that the three projects are eligible for funding through the NGEF and that the purpose of the NGEF is to provide funding for projects to connect previously unserved communities to natural gas service that would otherwise be uneconomic. The OEB noted the availability of NGEF funding as "an important consideration in the determination of the public interest in providing the availability of natural gas service in unserved communities."¹¹ The Decision on Intervenor Evidence also noted that "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."¹²

In another leave to construct proceeding, for Enbridge Gas's Panhandle Regional Expansion Project¹³, the OEB permitted Environmental Defence to present similar heat

¹⁰ The OEB notes that no prior determinations have been made in respect of the proposed survey evidence.

¹¹ EB-2022-0156/EB-2022-0248/EB-2022-0249, Decision on Intervenor Evidence and Confidentiality, April 17, 2023, p. 4.

¹² Ibid, p. 4

¹³ EB-2022-0157, Panhandle Regional Expansion Project

pump evidence. However, that project differs from the current project in some respects. First, it is not eligible for NGEF funding. Second, with an estimated cost of \$358 million, that is a much larger project than the project under consideration here.

On September 21, 2023, the OEB issued decisions approving the three applications (Final Decisions). The Final Decisions recognized that the approval of the leave to construct applications does not restrict customers in these communities from obtaining heat pumps either before or after an extension of natural gas service to these communities. The OEB acknowledged the potential benefits that heat pumps may afford customers and identified heat pump uptake as a potential risk to project viability. The OEB concluded that there were several financial and non-financial considerations influencing a customer's decision to opt for natural gas service and referenced letters of support from the target communities and the market surveys, as reflecting the expressed preferences of people in these communities.

The OEB noted the financial risks of customers not connecting (or leaving the project) and stated that in approving these applications, it must ensure that the interests of all Enbridge Gas's customers are also protected, and that one pillar of that protection is the implementation of an RSP for the first 10 years. During the RSP, Enbridge Gas is responsible for any shortfall in revenues to meet its revenue requirement. The OEB stated that this provides some insulation against possible underachievement of its customer-sign up estimates or projected natural gas consumption. The OEB also stated that in the first rebasing following the expiration of the RSP, it will review the actual project costs and revenues and determine what amount should be recognized in rates.

The OEB explicitly stated that:

all options will be available to the OEB ... with respect to the appropriate rate treatment of potential capital cost overruns and/or lower than forecast customer attachments/volumes (and associated revenues). Enbridge Gas is not guaranteed total cost recovery if actual capital costs and revenues result in an actual PI [profitability index] below 1.0.¹⁴

¹⁴ EB-2022-0156, Final Decision, pp. 20-21; EB-2022-0248, Final Decision, p. 21; EB-2022-0249, Final Decision, p. 20

The OEB also recognized the contribution that all Enbridge Gas customers were making to subsidize the expansion of natural gas service to the communities funded through the NGEF:

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. As previously stated, the OEB's Decision in this proceeding is in keeping with the existing legislation and the OEB's own policies and decisions for implementation.¹⁵

In its decision on the Motion to Review, the OEB found, in part, that:

The Final Decisions demonstrate that the original panel was alive to Environmental Defence's concerns about Enbridge Gas's customer attachment forecast. Despite not being allowed to file the evidence it wanted to, Environmental Defence was able to elicit and test Enbridge Gas's evidence through interrogatories and to critique Enbridge Gas's evidence in its final submission.¹⁶

Indeed, in the Final Decisions, the original panel acknowledged the potential benefits that heat pumps may afford customers and identified heat pump uptake as a potential risk to project viability. The original panel concluded there were many different factors affecting a decision to opt for natural gas service (with forecast revenue being only one consideration) and relied upon letters of support from the target communities and the market surveys.

In sum, Environmental Defence was able to make out its case. It was heard.¹⁷

¹⁵ EB-2022-0156, Final Decision, pp. 20-21; EB-2022-0248, Final Decision, p. 21; EB-2022-0249, Final Decision, p. 20

¹⁶ EB-2023-0313, Decision on Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249, p.15

¹⁷ EB-2023-0313, Decision on Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249, p.16, 17

Findings

Heat Pump Evidence

As noted above, in its Decision on Intervenor Evidence and the Final Decisions, the OEB rejected a similar request from Environmental Defence to file heat pump evidence.

The OEB denies Environmental Defence's request to file evidence on heat pumps in the Bobcaygeon community expansion proceeding for the reasons set out in those decisions, which were upheld by the OEB in its decision on a review motion brought by Environmental Defence.¹⁸ The OEB has provided a number of additional comments below.

The availability of NGEP funding is an important consideration in the determination of the public interest in providing the availability of natural gas service in unserved communities. The NGEP funded projects are not subject to the OEB's Integrated Resource Planning (IRP) Framework requirement that IRP alternatives to the expansion of natural gas distribution be explored when a utility applies for leave to construct an NGEP funded project.¹⁹

These applications do not involve the OEB making a choice between the approval of, or recommending, the use of heat pumps instead of an expansion of natural gas facilities in serving the relevant communities. Rather, the OEB must determine whether the public interest will be met by an approval of leave to construct for the NGEP-funded project. The principal evidence for this is derived from the legislation establishing the program and approving a commitment of funding the project through a selection process. Further confirmation of project need has been presented by survey and municipality representation favoring expansion of natural gas service.

The OEB notes the difficulty of establishing a sufficient record to challenge whether the carrying out of the legislatively established program is in accordance with customer need and customer interest in the acquisition of natural gas service. As noted in the OEB's determinations in the Final Decisions²⁰, the decision of individual consumers to

¹⁸ EB-2023-0313, Decision on Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249, p.15

¹⁹ EB-2020-0091, OEB's Integrated Resource Planning (IRP) Framework pp. 10, 48

²⁰ EB-2022-0156, Final Decision, p. 20; EB-2022-0248, Final Decision, p. 20; EB-2022-0249, Final Decision, p.19

opt for natural gas service is based on both financial and non-financial considerations (e.g., future commodity prices, familiarity, and reliability). The non-survey based evidence proposed by Environmental Defence would seek to establish that there is an available solution to the each community's energy needs that is superior to that enabled by the NGEF.

The OEB would be reluctant to potentially jettison the background and framework of the implementation of the NGEF program, as well as its own IRP provisions, on the basis that it perceives that evidence of potential superior performance of heat pumps sidelines natural gas as an energy provider.

The validity of similar OEB conclusions in the Final Decisions referenced earlier in this Decision has been subject to review by an OEB review panel in accordance with the OEB's *Rules of Practice and Procedure* (Rules). Environmental Defence brought a motion under Rule 40.01 of the OEB's Rules to review and reverse the OEB's decisions to not admit heat pump evidence from Environmental Defence in previous NGEF project proceedings, alleging a breach of procedural fairness. This evidence was primarily to be based on the efficacy and economics of heat pumps. In its Motion, Environmental Defence also challenged the Final Decisions to approve the projects, arguing that they were tainted by the refusal to allow the evidence and pointing to certain other alleged legal errors. On December 13, 2023, the OEB made its determinations regarding the motion and upheld the final decisions.

Survey Evidence

The OEB denies Environmental Defence's request to carry out a community survey in the community of Bobcaygeon as part of this proceeding.

Similar to the request to submit evidence to support the heat pump evidence discussed above, the consideration of Environmental Defence's request to submit survey evidence to ascertain the economic impact and potential take up of cold climate electric heat pumps necessitates a review of the pertinent aspects of the NGEF, and the OEB response and implementation of the same to date.

The program is grounded in legislation incorporated into the OEB Act as section 36.2 and implemented through the proclamation of O. Reg 24/19. The latter regulation provided for collection of program funds from all rate-regulated natural gas customers, the administration of the funds by the Independent Electricity System Operator and the

selection of projects and allowable amounts for contribution to the project capital expenditures similar to that of a contribution in aid of construction (CIAC).

The OEB, in its IRP Framework report, exempted Enbridge Gas from the necessity to explore IRP alternatives to expansion of the distribution of natural gas when bringing forward leave to construct applications based on NGEP program funds.²¹ Enbridge Gas has brought forward evidence of customer willingness in the target community to take up natural gas service in accordance with the NGEP program that will also require a System Expansion Surcharge payment from customers for a forty-year period as long as gas is received. Environmental Defence has requested approval to conduct its own survey of customers to determine whether cold climate heat pumps would be a better option for customers with a resultant impact on the financial viability of the proposed Enbridge Gas project.

The OEB in this proceeding agrees with the potential advantages of heat pumps as discussed in the Final Decisions,²² and this was acknowledged in the Decision on Motion to Review:²³

The OEB notes that the evidence and submissions in this proceeding have dealt extensively with the potential installation of electric heat pumps in terms of potential customer cost savings and their possible adoption by the communities to be served by Enbridge Gas. Such take-up might occur either before or after the extension of natural gas service to the communities. In turn, the effect of such take-up is addressed as a potential risk to project viability. The OEB has itself recognized the potential customer energy savings associated with the installation of such heat pumps and their favourable impact on lowering the consumption of natural gas. The OEB notes that its decision regarding Enbridge Gas's DSM program makes Enbridge Gas, in cooperation with the federal government's Greener Homes Initiative, the principal delivery agent for the incentivized installation of heat pumps.

²¹ EB-2020-0091, OEB's Integrated Resource Planning (IRP) Framework pp. 10, 48

²² EB-2022-0156, Final Decision, p. 19; EB-2022-0248, Final Decision, pp. 19,20; EB-2022-0249, Final Decision, p. 18

²³ EB-2023-0313, Decision on Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249

A survey involving potential take-up of heat pumps would presumably provide some background information to participants on costs and savings giving comparison to other forms of energy. The survey results could support a request that Enbridge Gas's application not be approved, and customers have to resort to a presumably more environmentally friendly choice with a different cost structure.

The OEB is aware that that background information accompanying survey questions can influence the results and the interpretation of the same. The content of information that has been distributed by Enbridge Gas promoting the benefits of receipt of natural gas service has already been a subject of controversy associated with a complaint made by Environmental Defence and other organizations to the Competition Bureau and an ongoing investigation of whether misleading advertising has taken place.²⁴

Without commenting in any way on the validity of such complaints, the OEB notes that an evaluation of the market for take-up of natural gas service as opposed to heat pumps might also involve adjudication of the validity of the survey and/or pre-distributed information.

The determinative value of an additional survey might well depend on a lengthy and difficult adjudication of the validity, timeliness and cogency of the information provided along with the questionnaire. The OEB is of the opinion that such an exercise may not result in a definitive conclusion. As well, as noted in the Final Decisions²⁵, the OEB agrees with Enbridge Gas that the decision of individual consumers to opt for natural gas service is based on both financial and non-financial considerations (e.g., future commodity prices, familiarity and reliability) which further diminishes the comparison value of another community survey.

However, it is important to note that in the Final Decisions, the OEB stated:

The approval of the Leave to Construct requested in this application does not restrict customers in this community from obtaining heat pumps either before or after an extension of natural gas service to these communities.

²⁴ Environmental Defence, January 11, 2024 letter, Attachment (Request for Inquiry to the Competition Bureau)

²⁵ EB-2022-0156, Final Decision, p. 20; EB-2022-0248, Final Decision, p. 20; EB-2022-0249, Final Decision, p.19

Nor does it remove Enbridge Gas's DSM program responsibilities in this community.²⁶

While issues associated with alleged improper representations associated with NGEP may be resolved in another forum, the OEB is of the view that the case for an alternative to natural gas service should primarily be a marketplace issue.

However, Enbridge Gas's responsibility for any failure to assess the long-term financial viability of a project does not end with completion of construction and its initial use. The NGEP program is based on legislation that allowed a subsidy from all natural gas customers to help fund the expansion of natural gas service to communities that lacked sufficient numbers of potential customers providing the revenue to justify such extension. As was noted in the Final Decisions:

Traditional utility regulatory principles provide that costs should be allocated proportionately to customers that have caused the costs to occur. This is reflected in the OEB's decision in the OEB's Generic Proceeding on Community Expansion and, more specifically in the rejection of a proposed approach that would result in existing customers subsidizing an uneconomic community expansion.²⁷

Given the unusual imposition of a project subsidy from all rate regulated natural gas customers, and the significant inability of these projects to attain a PI of 1 required to justify their undertaking in the absence of a subsidy, the OEB must assume that any potential shortfalls in the take-up and continuance of natural gas service have been carefully considered by Enbridge Gas in accordance with its responsibilities as a public utility invested with a franchise.

As was noted above, the OEB stated in the Final Decisions that there is no guarantee of total cost recovery in the event of a shortfall of revenue in the first rebasing following the expiration of the RSP and that there is a reasonable expectation that Enbridge Gas customers will not be called upon to provide a further subsidy to compensate for post-RSP revenue shortfalls. The OEB is of the view that challenges to the scope or validity of the measurement of potential customer take-up by natural gas service in these

²⁶ EB-2022-0156, Final Decision, p. 19; EB-2022-0248, Final Decision, p. 20; EB-2022-0249, Final Decision, pp. 18, 19

²⁷ EB-2022-0156, EB-2022-0248, EB-2022-0249 Final Decisions, p. 12

communities are best addressed by the marketplace and its reasonable expectations of the insulation of all Enbridge Gas customers from further subsidy than that accompanying any project approval.²⁸

While the OEB's decision is primarily based on the reasons set forth above, the OEB also notes that the request to submit survey evidence came after Environmental Defence's request to file the heat pump evidence. While some delay in the request may be ascribed to the timing of proceedings, in the event of a final OEB decision to approve the leave to construct, the end result of an accommodation of the late request would likely have resulted in a later decision, later service to customers, and potential additional costs accruing from construction delays.

The OEB is of the view that the proposed survey evidence is not likely to provide information that could support a definitive conclusion that the project does not meet the requisite goals established in legislation and/or is uneconomic and contrary to the public interest. The OEB further finds that there are potential protections to the public interest including the community's continued unimpeded access to heat pumps, the RSP, and the OEB's expectations concerning project financial results upon rebasing, the efficacy of which may be addressed in final arguments.

Accordingly, the OEB denies the Environmental Defence request for a community survey.

With respect to the exchange between Enbridge Gas and Environmental Defence on the possible future of carbon pricing, the OEB notes that its decision is not based on or influenced by speculation associated with potential future Federal election results and changes in policy that may be associated with the election of a new government. The exercise of clairvoyance is best left to political practitioners and not regulators of public utilities.

3.2 Consolidation of the NGEP Applications

In its letter filed on December 14, 2023, Environmental Defence recommended that the OEB hear the current Enbridge Gas NGEP proceedings (Bobcaygeon, Sandford, Eganville, Neustadt) together (including a single technical conference for all

²⁸ Based on Enbridge Gas's estimate of customers likely to take up gas service, existing natural gas customers will have contributed approximately \$18,378 per customer served by the Bobcaygeon community expansion project to assist in the expansion of gas in this community.

proceedings), stating that this may be more efficient, given the significant overlap in the issues, evidence, and witnesses.

Environmental Defence also suggested that it would be beneficial to receive a procedural order stating that evidence in any one of these NGEF-related proceedings may be referred to in another proceeding so that Enbridge Gas can more easily respond to some of the same interrogatories and technical conference questions.

Enbridge Gas filed a response on December 21, 2023 stating that the OEB should reject Environmental Defence's proposal to consolidate the proceedings stating that the proceedings were at various stages and therefore consolidating them would result in unnecessary delays to the proceedings which are more advanced (i.e. the Bobcaygeon and Sandford projects).

Enbridge Gas stated that it has staggered the filing of its community expansion applications in consideration of several factors including resource availability, community readiness and completion of filing requirements and it would be counterproductive to delay and consolidate proceedings for projects that Enbridge Gas has staggered for these reasons.

Regarding Environmental Defence's request for a joint technical conference for the proceedings, Enbridge Gas argued that for the Bobcaygeon and Sandford projects, technical conferences are not required since the record is complete, and no party raised substantive issues that require further inquiry or clarification. Regarding the Eganville and Neustadt projects, Enbridge Gas noted that Environmental Defence's request for a joint technical conference was submitted prior to the filing of interrogatory responses and parties' submissions regarding the need for technical conferences, and submitted that the OEB should make its determination regarding the need for technical conferences for those proceedings after it has reviewed Enbridge Gas's interrogatory responses and parties' submissions regarding the need for technical conferences.

Enbridge Gas also submitted that while some of its evidence is prepared by utility staff that are common across the proceedings, other parts of its evidence are prepared by utility staff that are unique to each project, providing limited value from a joint technical

conference. Enbridge Gas noted that several aspects of the proceedings are unique, including the size and scope of the proposed projects²⁹ and the intervening parties.³⁰

Findings

Environmental Defence suggests that it may be more efficient and a better use of the OEB's resources to:

- a) combine the proceedings such that the Enbridge Gas expansion applications for the Bobcaygeon, Sandford, Eganville, Neustadt applications are heard together, and
- b) have a single technical conference for all proceedings

The OEB appreciates that the suggestions could have validity with respect to promoting adjudicative efficiency and have considered them in that context for this proceeding.

However, the OEB finds that neither suggestion satisfies that goal of increased efficiency for the reasons that follow.

Hearing the proceedings together would have limited probative value and would cause further and unnecessary delays to the proceedings, given the unique timing and circumstances of each project. The Bobcaygeon community expansion project proceeding has already experienced delays as the OEB placed the proceeding into abeyance pending the OEB's determination on a Motion filed by Environmental Defence.³¹

The OEB recognizes that Enbridge Gas desires to execute project work in a coordinated manner to ensure appropriate resources are available for project development and construction.

The OEB notes that each application is different, in terms of geographical location, size and scope of the project and specific interests related to each application and proposed service area.

²⁹ For example, Bobcaygeon (approximately 3600 customers with an estimated cost of \$115.2 million) versus Sandford (approximately 183 customers with an estimated cost of \$7.2 million)

³⁰ Sandford includes Independent Participant Elizabeth Carswell as an approved intervenor, whereas Bobcaygeon does not; Bobcaygeon includes the Federation of Rental-housing Providers of Ontario as an approved intervenor, whereas the Sandford does not.

³¹ EB-2023-0313

While the OEB appreciates the suggestion from Environmental Defence to combine the applications, the OEB finds it would not serve the public interest to do so, as each application proposes service to a unique and geographically different part of Ontario.

The OEB notes that in the section that follows the OEB finds that it does not require further discovery of Enbridge Gas's evidence and the request for a single technical conference is moot.

3.3 Technical Conference and/or Oral Hearing Requests

As part of its intervention request, Environmental Defence requested that the OEB provide for a technical conference or for parties to comment on the need for a technical conference following the receipt of interrogatory responses. FRPO also recommended that the OEB provide for a technical conference.

In Procedural Order No. 1, the OEB provided for the filing of comments by OEB staff and intervenors on the need for a technical conference and allowed Enbridge Gas an opportunity to respond to those comments.

OEB staff stated that having reviewed the responses to interrogatories, it has no further questions for Enbridge Gas and will not require further discovery through a technical conference.

Pollution Probe noted that there are gaps in information which could be bridged through proceeding with the Environmental Defence evidence proposal, plus an additional stage in the form of a short technical conference and/or oral hearing component.

Environmental Defence stated that a number of the interrogatory responses raise important additional questions that impact the project economics and the financial risks for ratepayers. Environmental Defence provided examples of the topic areas that they would like to address through a technical conference which it stated would assist the OEB in considering this application and in fulfilling its mandate to protect the interest of ratepayers.

FRPO commented that Enbridge Gas's interrogatory responses leave a number of unanswered questions about facility sizing and alternatives. FRPO also stated that in reviewing responses provided to other parties' interrogatories, it has concerns about Enbridge Gas's approach to the economics of the project which it stated bear on resulting risk to ratepayers at the end of the initial ten-year RSP. FRPO submitted that

its ability to assist the OEB would be aided by a technical conference to understand better Enbridge Gas's approach to facilities and economics for this project.

Enbridge Gas responded to comments on the need for a technical conference, submitting that a technical conference is not required as the record is complete, and no party raised a substantive area that requires further inquiry or clarification. Enbridge Gas stated that it had provided responses to specific interrogatories that Environmental Defence identified as areas that necessitated further inquiry through a technical conference. Enbridge Gas also responded to comments from FRPO and Pollution Probe stating that neither of these parties had provided justification for a technical conference based on a particular reference to the evidentiary record.

Findings

The OEB finds that it does not require further discovery through a technical conference on Enbridge Gas's evidence.

A technical conference and/or oral hearing would have limited probative value given the opportunity for discovery through the interrogatory process.

A technical conference and/or oral hearing would also cause further and unnecessary delays to this proceeding. These delays would be counterproductive to the timing and costs of construction and not in the best interests of customers.

The OEB will move directly to written submissions in this proceeding.

3.4 Confidentiality Request

Enbridge Gas requested confidential treatment for personal information at the following interrogatory response:

- Exhibit I. STAFF.10, Attachment 1

Findings

The OEB has reviewed Enbridge Gas's request for the redaction of personal information contained in the noted interrogatory response. The OEB finds that the redacted information at Exhibit I. STAFF.10, Attachment 1 is personal information as defined in the *Freedom of Information and Protection of Privacy Act* (FIPPA) and OEB's *Practice Direction on Confidential Filings* (Practice Direction). This information, which contains names, contact information, and addresses of property owners, shall remain redacted and shall not be provided to parties to the proceeding.

3.5 Abeyance

As noted previously, on October 11, 2023, the OEB issued a letter placing the current proceeding in abeyance pending the OEB's determination on the Motion to Review, stating that the matters cited in the Motion to Review raise issues that are relevant to this proceeding and that it would be prudent to provide directions on the next steps in this proceeding after the OEB has considered the Motion to Review.

The OEB advises that the current proceeding is out of abeyance effective February 20, 2024, with the issuance of this Decision and Procedural Order.

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas's argument-in-chief shall be filed with the OEB and served on all parties by **March 8, 2024**.
2. Any written submissions from OEB staff and intervenors, shall be filed with the OEB and served on all parties by **March 25, 2024**.
3. Any written reply submissions from Enbridge Gas shall be filed with the OEB and served on intervenors by **April 8, 2024**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number **EB-2022-0111** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar at the address below and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Judith Fernandes at Judith.Fernandes@oeb.ca and OEB Counsel, James Sidlofsky at James.Sidlofsky@oeb.ca.

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll free)

DATED at Toronto February 20, 2024

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar