



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

EB-2023-0261

ONTARIO ENERGY BOARD

**Application for leave to construct natural gas pipeline
and associated facilities in the Community of Neustadt
within the Municipality of West Grey**

BEFORE: Robert Dodds
Presiding Commissioner

Michael Janigan
Commissioner

David Sword
Commissioner

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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 12 kilometres of natural gas pipeline and associated facilities in the Community of Neustadt within the Municipality of West Grey. The proposed pipeline will supply natural gas to approximately 230 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, 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 Neustadt
- 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Eganville, Neustadt) and the EPCOR Natural Gas Limited Partnership (EPCOR) Brockton application,¹ (which has now been withdrawn by EPCOR), given the overlap in the issues and evidence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 also requested a short technical conference and/or oral hearing.

¹ EB-2022-0246

For the reasons that follow, the OEB denies the requests made by Environmental Defence and Pollution Probe.

2 PROCESS

On September 15, 2023, Enbridge Gas filed an application for leave to construct 12 kilometres of natural gas pipeline and associated facilities in the Community of Neustadt within the Municipality of West Grey. The OEB issued a Notice of Hearing on October 10, 2023.

Environmental Defence and Pollution Probe applied for intervenor status and cost eligibility and were approved as intervenors. In its intervention request, Environmental Defence stated that it wished to file heat pump evidence in this proceeding and provided a brief description of its proposed evidence. Environmental Defence also stated that it may request that the OEB provide for a technical conference following the receipt of interrogatory responses.

In Procedural Order No. 1, issued November 17, 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 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 by December 1, 2023 and Enbridge Gas filed its interrogatory responses on December 15, 2023. OEB staff and intervenors filed comments on the need for a technical conference by January 10, 2024 and Enbridge Gas filed a response to these comments on January 17, 2024.

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 (EPCOR) Brockton application,² 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

² EB-2022-0246

- 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.

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 NGEIP applications (Bobcaygeon, Sandford, Neustadt, and Eganville)
- Requests for a technical conference
- Pollution Probe's request for an oral hearing

3 DECISION

3.1 Environmental Defence's Proposed Evidence

In its intervention request filed on November 9, 2023, Environmental Defence stated that it wishes to file evidence in this proceeding and can provide a letter outlining that evidence and the expected cost in short order.

In a 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 seeks to file heat pump evidence 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.

In a letter filed on January 9, 2024, Pollution Probe supported Environmental Defence's requests to file 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 energy and equipment choices will be made by consumers and businesses in this community. Pollution Probe 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.³

³ Pollution Probe letter, January 9, 2024, p.1,2

Pollution Probe asserted that while Enbridge Gas recently indicated that it does not believe that it is Enbridge's role (as the monopoly gas utility) to consider non-gas options⁴, Ontario consumers certainly do. Pollution Probe requested that the OEB allow Environmental Defence to commission and file the evidence it has proposed, which would help mitigate information gaps and related risks in this proceeding. Pollution Probe further stated that the choices of consumers is not retrospective, but prospective based on current, objective and unbiased information related to current energy alternatives and that an objective survey based on that information is an essential element to validate real demand for the proposed project.

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).

⁴ EB-2022-0156/0248/0249, Enbridge Gas Reply Submission, para. 31.

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 Project⁵) 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.

⁵ EB-2022-0157, Panhandle Regional Expansion Project

On January 17, 2024, Enbridge Gas filed comments on the need for a technical conference. As part of its comments, Enbridge Gas opposed Pollution Probe's arguments supporting Environmental Defence's evidence proposal, stating that Pollution Probe relies on mischaracterizations regarding information related to other proceedings. Enbridge Gas argued that Pollution Probe's statement that "Enbridge recently indicated that it does not believe that is Enbridge's role to consider non-gas options" is misleading. Enbridge Gas argued that it has stated that it should not be "directed to provide information on the annual operating cost of electric heat pumps relative to the operating cost of natural gas" and that "providing consumers with information related to conversions to any non-natural gas energy solution, in particular electric heat pumps, without consideration of those energy solutions' supply-side requirements would not be appropriate or valuable. That is a role best left to the providers of those non-natural gas energy solutions."⁶ Enbridge Gas also argued that Pollution Probe appears to ignore the OEB's Integrated Resource Planning Framework for Enbridge Gas, where the OEB concluded that IRP evaluation is not required for NGEP-funded projects.⁷

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.

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 NGEP 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.

⁶ EB-2022-0156/0248/0249, Enbridge Gas Reply Submission, para. 31.

⁷ EB-2020-0091, Decision and Order (Appendix A), pp. 10-11]

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.⁸

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."⁹ 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."¹⁰

In another leave to construct proceeding, for Enbridge Gas's Panhandle Regional Expansion Project¹¹, the OEB permitted Environmental Defence to present similar heat 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

⁸ The OEB notes that no prior determinations have been made in respect of the proposed survey evidence.

⁹ EB-2022-0156/EB-2022-0248/EB-2022-0249, Decision on Intervenor Evidence and Confidentiality, April 17, 2023, p. 4.

¹⁰ Ibid, p. 4

¹¹ EB-2022-0157, Panhandle Regional Expansion Project

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 a rate stability period (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 1.0.¹²

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 NGEP:

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.¹³

¹² EB-2022-0156, Final Decision, pp. 20-21; EB-2022-0248, Final Decision, p. 21; EB-2022-0249, Final Decision, p. 20

¹³ EB-2022-0156, Final Decision, pp. 20-21; EB-2022-0248, Final Decision, p. 21; EB-2022-0249, Final Decision, p. 20

On September 27, 2023, Environmental Defence filed a Motion to Review¹⁴ the OEB's decisions (relating to the admissibility of intervenor evidence and to the merits of the applications) in the Selwyn, Mohawks of the Bay of Quinte and Shannonville, and Hidden Valley community expansion proceedings.¹⁵

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 decision¹⁶ on the Motion to Review 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.

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.¹⁷

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.

¹⁴ EB-2023-0313 Motion to Review and Vary OEB Decisions in EB-2022-0156/EB2022-0248/EB-2022-0249

¹⁵ 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

¹⁶ EB-2023-0313 Decision on Motion to Review and Vary OEB Decisions in EB-2022-0156/EB2022-0248/EB-2022-0249

¹⁷ EB-2023-0313, Decision on Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249, p.15

In sum, Environmental Defence was able to make out its case. It was heard.¹⁸

On February 20, 2024, the OEB issued a Decision on Intervenor Evidence, Consolidation of Natural Gas Expansion Program-related Proceedings, Technical Conference, Confidentiality and Procedural Order No. 2 in the Bobcaygeon community expansion proceeding (Bobcaygeon Decision and Procedural Order No. 2).¹⁹ In the Bobcaygeon Decision and Procedural Order No. 2, the OEB, among other things, denied:

- Environmental Defence's request to file heat pump and survey evidence
- Environmental Defence's request to consolidate the hearing of four Enbridge Gas NGEP-related applications (Bobcaygeon, Sandford, Eganville, Neustadt)
- Environmental Defence's request to hold a joint technical conference and Pollution Probe's request to hold an oral hearing in the NGEP-related proceedings²⁰

Findings

Heat Pump Evidence

As noted above, in its Decision on Intervenor Evidence, the Final Decisions, and the Bobcaygeon Decision and Procedural Order No. 2, 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 Neustadt 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.²¹ Consistent with its findings in the Bobcaygeon community

¹⁸ 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

¹⁹ EB-2022-0111, Decision on Intervenor Evidence, Consolidation of Natural Gas Expansion Program-related Proceedings, Technical Conference, Confidentiality and Procedural Order No. 2, February 20, 2024

²⁰ EB-2022-0111, Decision on Intervenor Evidence, Consolidation of Natural Gas Expansion Program-related Proceedings, Technical Conference, Confidentiality and Procedural Order No. 2, February 20, 2024, pp. 14-19, 21-22, 23

²¹ EB-2023-0313, Decision on Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249, p.15

expansion proceeding²², 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.²³

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 Decisions²⁴, 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). The non-survey based evidence proposed by Environmental Defence would seek to establish that there is an available solution to each community's energy needs that is superior to that enabled by the NGEP.

The OEB would be reluctant to potentially jettison the background and framework of the implementation of the NGEP program, as well as its own IRP provisions, on the basis

²² EB-2022-0111, Decision on Intervenor Evidence, Consolidation of Natural Gas Expansion Program-related Proceedings, Technical Conference, Confidentiality and Procedural Order No. 2, February 20, 2024, pp. 14-19

²³ EB-2020-0091, OEB's Integrated Resource Planning (IRP) Framework pp. 10, 48

²⁴ EB-2022-0156, Final Decision, p. 20; EB-2022-0248, Final Decision, p. 20; EB-2022-0249, Final Decision, p.19

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 NGEP 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 Neustadt as part of this proceeding. Consistent with its findings in the Bobcaygeon community expansion proceeding²⁵, the OEB has provided a number of additional comments below.

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 NGEP, 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).

²⁵ EB-2022-0111, Decision on Intervenor Evidence, Consolidation of Natural Gas Expansion Program-related Proceedings, Technical Conference, Confidentiality and Procedural Order No. 2, February 20, 2024, pp. 14-19

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.²⁶

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,²⁷ and this was acknowledged in the Decision on Motion to Review:²⁸

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.

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

²⁶ EB-2020-0091, OEB's Integrated Resource Planning (IRP) Framework pp.10, 48

²⁷ EB-2022-0156, Final Decision, p. 19; EB-2022-0248, Final Decision, pp. 19,20; EB-2022-0249, Final Decision, p. 18

²⁸ EB-2023-0313, Decision on Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249

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 background information accompanying survey questions can influence the results and the interpretation of the same. The content of information that has been distributed 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.²⁹ 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 Decisions³⁰, 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. Nor does it remove Enbridge Gas's DSM program responsibilities in this community.³¹

²⁹ Environmental Defence, January 11, 2024 letter, Attachment (Request for Inquiry to the Competition Bureau)

³⁰ EB-2022-0156, Final Decision, p. 20; EB-2022-0248, Final Decision, p. 20; EB-2022-0249, Final Decision, p.19

³¹ EB-2022-0156, Final Decision, p. 19; EB-2022-0248, Final Decision, p. 20; EB-2022-0249, Final Decision, pp. 18,19

While issues associated with potentially improper representation 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 NGEF 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.³²

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 communities are best addressed by the marketplace and its reasonable expectations of the insulation of all

³² EB-2022-0156, EB-2022-0248, EB-2022-0249 Final Decisions, p. 12

Enbridge Gas customers from further subsidy than that accompanying any project approval.³³

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

³³ Based on Enbridge Gas's estimate of customers likely to take up gas service, existing natural gas customers will have contributed approximately \$22,174 per customer served by the Neustadt 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 projects³⁴ and the intervening parties.³⁵

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

As discussed previously, in the Bobcaygeon Decision and Procedural Order No. 2, the OEB denied Environmental Defence's request to consolidate the Enbridge Gas community expansion applications.³⁶ Therefore, it is not necessary to consider the request further in the current proceeding. The OEB rejects Environmental Defence's consolidation request for the same reasons as set out in the Bobcaygeon community expansion proceeding.

3.3 Technical Conference and/or Oral Hearing Requests

As part of its intervention request, Environmental Defence stated that it may request that the OEB make provision for a technical conference following the receipt of interrogatory responses.

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 by January 10, 2024 and allowed Enbridge Gas an opportunity to respond to those comments by January 17, 2024

³⁴ 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)

³⁵ 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.

³⁶ EB-2022-0111, Decision on Intervenor Evidence, Consolidation of Natural Gas Expansion Program-related Proceedings, Technical Conference, Confidentiality and Procedural Order No. 2, February 20, 2024, pp. 21-22

Environmental Defence submitted that a technical conference is warranted for the same reasons as in the Bobcaygeon and Sandford gas expansion proceedings as the same information gaps and issues exist in this case. Environmental Defence also submitted that it would be most efficient for a single technical conference to be convened for all of the ongoing Enbridge Gas community expansion applications being heard by the OEB as there are many overlapping questions.

In its comments on the need for a technical conference, Pollution Probe submitted that Enbridge Gas provided significant new information through its interrogatory responses. Pollution Probe stated that OEB's recent Phase 1 Decision³⁷ also reiterated challenges related to issues relevant to this project, such as the lack of objective energy option information and modern alternatives to prospective natural gas customers in the existing communications, public open house and attachment survey. Pollution Probe submitted that some of the information gaps (e.g. survey) could be bridged by the Environmental Defence evidence proposal, and the use of a short technical conference and/or oral hearing component. Pollution Probe stated that it supported the combination of these tools to provide the best available objective and credible information to the OEB, reduce project risks and ensure an open, credible and transparent process.

On January 10, 2024, OEB staff filed comments on the need for a technical conference stating that having reviewed the responses to the interrogatories, it does not require further discovery through a technical conference on Enbridge Gas's evidence. OEB staff further stated that if the OEB allows Environmental Defence to file evidence, some discovery in respect of that evidence would be required, potentially including a technical conference.

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, clarification or examination through a technical conference or oral hearing.

Enbridge Gas contested Environmental Defence's submission that a technical conference is warranted for the same reasons as in the Bobcaygeon and Sandford proceedings, stating that it has provided detailed responses to Environmental Defence's requests for technical conferences for those proceedings and based on those

³⁷ EB-2022-0200 Decision on Enbridge Gas Application for 2024 Rates – Phase 1

responses, Enbridge Gas submitted that Environmental Defence has not provided a substantive basis to require a technical conference.

Enbridge Gas opposed Pollution Probe's arguments supporting the need for a technical conference and/or oral hearing stating that Pollution Probe has mischaracterized information related to another proceeding. Enbridge Gas specifically addressed Pollution Probe's suggestions that, within the OEB's Phase 1 Decision, the OEB reiterated Pollution Probe's concerns regarding the lack of objective information being provided to prospective customers by Enbridge Gas within its attachment surveys. Enbridge Gas commented that Pollution Probe's statement is misleading and that in fact, the OEB directed Enbridge Gas to "review the energy comparison information currently on its website and printed materials to determine whether it fully discloses what is being compared and on what basis, and what assumptions are being used for the comparison. Enbridge Gas shall either update the information to correct any deficiencies or remove the information."³⁸ Enbridge Gas opposed Pollution Probe's suggestion that Enbridge Gas provided significant new information through its interrogatory responses, claiming that this is baseless allegation as no evidence was provided by Pollution Probe to support its statement.

Enbridge Gas argued that Pollution Probe has not provided meaningful support for a technical conference and/or oral hearing and as such Pollution Probe's submission should be given no weight. Based on the foregoing, Enbridge Gas submits that there is no basis for a technical conference and/or oral hearing and the most regulatory efficient next step is the filing of submissions.

Enbridge Gas agreed with OEB staff's position that if the OEB allows Environmental Defence to file evidence, some discovery would be required (potentially including a technical conference), and reiterated its position within its December 21, 2023 letter that it requires the opportunity for discovery and to file responding evidence. Regarding a technical conference related to Environmental Defence's evidence, Enbridge Gas submitted that the OEB should make that determination upon review of Environmental Defence's interrogatory responses.

³⁸ EB-2022-0200, Decision and Order, p. 47

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 that the OEB is denying the request to file heat pump evidence and survey evidence.

A technical conference and/or oral hearing would 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.

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 22, 2024**.
2. Any written submissions from OEB staff and intervenors, shall be filed with the OEB and served on all parties by, **April 5, 2024**.
3. Any written reply submissions from Enbridge Gas shall be filed with the OEB and served on intervenors by, **April 19, 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-2023-0261** 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, Michael Beare at Michael.Beare@oeb.ca and OEB Counsel, Jamie Sidlofsky at James.Sidlofsky@oeb.ca.

Email: registrar@oeb.ca

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

DATED at Toronto February 29, 2024

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar