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BY EMAIL

April 11, 2024

Kent Elson
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Dear Mr. Elson:

Re: **Environmental Defence
Motion to Review OEB Decisions on Intervenor Evidence in the
EB-2022-0111, EB-2023-0200, EB-2023-0201 and EB-2023-0261
Applications
OEB File No: EB-2024-0114**

On March 11, 2024, Environmental Defence filed a motion to review the OEB's decisions to deny Environmental Defence's and Elizabeth Carswell's requests to file evidence in four related natural gas expansion leave to construct applications (the Current Applications).¹ Environmental Defence also advised that it intends to appeal these decisions to the Divisional Court under s. 33 of the *Ontario Energy Board Act, 1998*. The Current Applications are all part of the provincial government's [Natural Gas Expansion Program](#).

With its Notice of Motion, Environmental Defence indicated that it is content to wait until after the outcome of the Current Applications is determined before having the review heard. Subsequently, Enbridge Gas filed a letter arguing that the OEB should dismiss the Environmental Defence Motion without a hearing, and that if the motion is heard it should be dealt with before the OEB issues decisions on the Current Applications. Enbridge Gas expressed concerns about delays to construction as motions and/or appeals are resolved.

¹Bobcaygeon Community Expansion Project (EB-2022-0111), Sandford Community Expansion Project (EB-2023-0200), Eganville Community Expansion Project (EB-2023-0201), and Neustadt Community Expansion Project (EB-2023-0261). Elizabeth Carswell sought to file evidence only in the Sandford Community Expansion Project proceeding (EB-2023-0200).

I have determined that the appropriate time to consider a motion to review is once the hearing panel has made its final decisions in the Current Applications.

A motion to review is to be brought forth under the Rule 40 of the OEB's Rules of Practice and Procedure which states:

40. Request

40.01 Subject to Rule 40.02, any person may bring a motion requesting the OEB to review all or part of a **final order or decision** [emphasis added], and to vary, suspend or cancel the order or decision.

A plain reading of this section means a motion to review under Rule 40 can only be filed following a **final** order or **final** decision. Environmental Defence's motion to review is based on an interlocutory decision by the hearing panel to deny the filing of evidence. It is based on an alleged procedural error in advance of the hearing panel making its final decisions on the Current Applications. Hence my conclusion that the appropriate time to consider a motion to review is at the time of the final decision, at which time the impact of the alleged error on the final decision can be assessed. To be clear, a party has the option of filing a motion under Rule 8 of the OEB's Rules of Practice and Procedure to raise any interlocutory issues with a hearing panel.

For a similar motion to review filed by Environmental Defence² for three other applications under the Natural Gas Expansion Program,³ the OEB determined that "the appropriate time to consider any motion is once the current hearing panel has issued its final decisions for the proceedings."⁴ This determination was made based on the lack of information on how the hearing panel would consider the submissions of parties and make its final decisions. For the Current Applications, the hearing panel has also not made its final decisions.

Given the conclusion above that a motion to review should be filed after a final order or final decision, I further conclude that the 20 calendar-day timeline for filing a motion to review, which is set out in Rule 40, would start at the time of the final order or final decision.

If the Current Applications are approved, and a motion to review the final decisions is pending, Enbridge Gas raised concerns about potential delays to construction. Absent an order to stay any approvals, Enbridge Gas would have leave to construct, subject to any conditions that may be imposed. The OEB would make reasonable efforts to process any motion to review the final decisions in an expeditious manner. However, the OEB cannot

² EB-2023-0190

³ Selwyn Community Expansion Project (EB-2022-0156), the Mohawks of the Bay of Quinte Community Expansion Project (EB-2022-0248), and the Hidden Valley Community Expansion Project (EB-2022-0249)

⁴ EB-2023-0190, OEB Letter, July 12, 2023, p. 2

control the timing or progress of any appeal that may be filed to the Divisional Court.

If Environmental Defence decides to pursue a motion to review the final decisions on the Current Applications, including on the grounds of alleged procedural unfairness, the OEB will deal with the motion at that time. As with any motion to review, the OEB may, under Rule 43, consider the threshold question of whether the motion warrants a review of the decisions on the merits.

Yours truly,

Lynne Anderson
Chief Commissioner

c: All parties in EB-2022-0111, EB-2023-0200, EB-2023-0201, and EB-2023-0261