

# Elson Advocacy

May 31, 2024

**BY RESS**

**Nancy Marconi**

Registrar

Ontario Energy Board

2300 Yonge Street, Suite 2700, P.O. Box 2319

Toronto, Ontario M4P 1E4

Dear Ms. Marconi:

**Re: EB-2022-0111 – Enbridge Gas – Bobcaygeon Gas Expansion Project**

I am writing on behalf of Environmental Defence to provide a response to Enbridge's request that Environmental Defence's cost claim be significantly reduced. Contrary to Enbridge's suggestions, Environmental Defence's costs are very reasonable and no disallowance is warranted.

Overall, Environmental Defence's costs for this proceeding are approximately 40% lower than the average of other intervenors in this proceeding (\$7,934.86 for Environmental Defence versus an average of \$12,119.25 for other intervenors). Compared to the yardstick of other intervenors' costs claims, Environmental Defence's costs are not only reasonable – they are comparatively much lower.

Enbridge specifically objects to Environmental Defence's costs in the "discovery" category. However, Environmental Defence's costs this category are also lower than any other intervenors (\$5,566.38 for Environmental Defence versus an average of \$8,576.71 for other intervenors). There is no basis to argue that Environmental Defence's discovery costs are too high.

Enbridge argues that Environmental Defence should be penalized for submitting interrogatories that replicated or were similar to interrogatories in previous gas expansion proceedings. This is not an appropriate basis for disallowing costs. Environmental Defence cannot rely on responses to interrogatories in previous proceedings and therefore must ask the same question in each proceeding if it may wish to rely on the answer. If Environmental Defence had attempted to rely on evidence in other proceedings, Enbridge would surely have objected. In any event, Environmental Defence is not seeking a material quantum of costs for any replicated interrogatories as those involved almost no time to prepare in this proceeding.

Furthermore, the interrogatories that were asked in multiple proceedings were not burdensome to Enbridge. It merely needed to copy and paste the answers. If Enbridge wanted to avoid this, it should not have opposed Environmental Defence's proposal that evidence in the gas expansion proceedings be shared between those proceedings.

In addition, the “discovery” cost category is not limited to interrogatories. It also includes “read and research application and evidence,” and the bulk of Environmental Defence’s discovery costs are under that line item. Enbridge has provided no reasons to object to that work.

Finally, Enbridge argues that certain interrogatories were beyond the scope of this proceeding. That argument is without basis. Environmental Defence’s interrogatories were focused on challenging Enbridge’s customer connection and revenue forecasts. This included, but was certainly not limited to, questions about the availability of cost-effective alternatives that could cause customers to decide against connecting to the gas system. This is directly relevant to the risk that existing customers will bear revenue shortfalls over the 40-year revenue horizon.

Enbridge made similar objections relating to scope when it opposed Environmental Defence’s costs in EB-2023-0313 (Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249). The review panel rejected Enbridge’s submissions in that case and awarded Environmental Defence’s requested costs, ultimately concluding as follows:

The OEB agrees with ED’s response to Enbridge Gas’s position. The OEB benefits from hearing a variety of perspectives, which may not be possible “if parties are penalized for pursuing perspectives that do not ultimately win the day”.<sup>1</sup>

The same logic applies in here. Although Environmental Defence did obtain the leave to file evidence or obtain the conditions it sought, it brought a very different perspective to the issues and did so at a very low cost.

Yours truly,



Kent Elson

cc: Applicant

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<sup>1</sup> EB-2023-0313, Decision and Order on Cost Awards, March 5, 2024, p. 3.