

Ms. Nancy Marconi
OEB Registrar
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

June 11, 2024

**EB-2023-0261 Neustadt Community Expansion Project Leave to Construct
Pollution Probe Cost Claim Reply**

Dear Ms. Marconi:

Pollution Probe is in receipt of Enbridge's letter dated June 6, 2024 related to Cost Claims for the above-noted proceeding. Pollution Probe provides the following comments in relation to its Cost Claim in response to comments submitted by Enbridge.

Enbridge's suggestion of a general reduction for the Pollution Probe Cost Claim is baseless when compared to the fact of the proceeding and the specific details included in Pollution Probe's Cost Claim. Each of Enbridge's assertions are dealt with in the responses below. Pollution Probe notes that the time and related costs included in its Cost Claim are reasonable and responsible. Pollution Probe strongly disagrees with Enbridge's basis for any disallowance and requests that the OEB approve the Pollution Probe Cost Claim as filed.

Enbridge Issues

Enbridge Issues #1: Comparison of the claim amount with the Environmental Defence Cost Claim.
Enbridge Issue#2: Filing of certain materials and interrogatories from similar expansion proceedings.
Enbridge Issue #3: Focus on issues not relevant to the Issues List in the proceeding.

1. Enbridge Issue #1: Comparison to the ED Claim

The majority of the comments submitted by Enbridge relate to Environmental Defence's Cost Claim, but Pollution Probe has not included comments directly related to the Environmental Defence Cost Claim since that would be inappropriate and an 'apples to oranges' comparison based on each party's participation in the proceeding and the specific information included in each Cost Claim. The Pollution Probe's Cost Claim stands on its own merit and is based on time spent and the related costs.

It is inappropriate for Enbridge to suggest broad based disallowances on costs claims without a detailed rational comparative analysis to support such recommendations. Enbridge's comparison is superficial at best and clearly misleading when compared to the facts summarized below. There are many differences between the areas for focus, analysis and approach between intervenors in this proceeding. One illustrative example is the consolidated approach taken by Environmental Defence across a number of concurrent Leave to Construct applications. In Pollution Probe's view a consolidated approach is more

efficient and would have reduced workload and related costs, but Enbridge fought against that approach resulting in Pollution Probe and Enbridge to treat all concurrent Leave to Construct proceedings as independent. To argue against those cost now is illogical and inconsistent. More specifically, Enbridge submitted in this proceeding:

Enbridge Gas notes that ED's submissions are a combination of submissions that relate to four distinct leave to construct applications (EB-2022-0111, EB-2023-0200, EB-2023-0201 and EB-2023-0261). ED made its submissions on a consolidated basis notwithstanding the OEB's ruling in Procedural Order No. 2 to not consolidate the above applications as previously requested by ED. A result of ED's decision to ignore the OEB's ruling is that, in making its submissions, ED relied on evidence that was admitted in the other proceedings but does not form part of the evidentiary record in this proceeding related to the Project. Enbridge Gas does not consent to the admission of evidence filed in an unrelated matter in the Application or it being given any weight by the OEB in its adjudication of the Application related to the Project.¹

Also of interest is Enbridge criticism of the lack of duplication in interrogatories with those from OEB Staff. It is ideal when duplication is minimized with OEB Staff and it seems strange that Enbridge is attempting to criticize parties when they attempt to do exactly that. The last section of this document includes some additional information on Environmental Report issues that further highlights the difference in focus from ED and the difference for the Pollution Probe Cost Claim.

Enbridge Issue#2: Filing of certain materials and interrogatories from similar expansion proceedings.

Also as noted above in Enbridge's Reply Submission, Enbridge has suggested in recent Leave to Construct proceedings that parties should not be allowed to reference existing evidence on the record of other similar proceedings. This is despite Enbridge breaking its own rule in various proceedings². Pollution Probe does not agree with Enbridge's interpretation and reserves the right to reference any relevant materials on the public record from any proceeding. In an attempt to mitigate Enbridge's objections, Pollution Probe did request that certain information be put on the record in this proceeding (e.g. via interrogatory requests) that was already on the record in other similar proceedings. It is inappropriate for Enbridge to suggest that parties should be penalized by following a process that Enbridge itself requested in the proceeding. Enbridge's application of double standards is not helpful or appropriate. Pollution Probe submits that it is a more efficient process to reference evidence and materials on the public record of other proceedings, but that has simply lead to the complaint by Enbridge that this is not procedurally allowed.

The suggestions by Enbridge appear to be a new tactic on behalf of Enbridge to threaten a cost disallowance if a party questions the consideration of options not supported by Enbridge (e.g. customer choice for non-gas options or the reasonableness of a project forecast that could decrease natural gas project economics and capital rate base). A significant strength of the OEB process is that it is an open, fair and transparent process that enables a fact-based Decision. Allowing the perception of Applicants to

¹ EB-2023-0261 EGI Reply Submission, paragraph 9.

² To many examples to include, but examples are: EB-2022-0157 EGI_ReplyARG_PREP_20240129 footnote references 34, 38, 43, 80, 194, 253; and EB-2020-0200 EGI_ReplyARG_2024 Rebasing_20231011 footnote references 31, 32, 33, 34, 35, 36, 37, 64, 132.

pursue punitive action against those that rightly question their evidence and related assumptions could weaken and undermine the principles that the OEB process is built on.

Enbridge Issue #3: Focus on issues not relevant to the Issues List in the proceeding.

Enbridge applied a theoretical decrease to the Pollution Probe Cost Claim based on Enbridge's assumption that certain topics, materials and related interrogatories were not permissible in this proceeding (i.e. out of scope). A list of IR responses was included in the submission by Enbridge.

Any opinions related to proceeding scope and the OEB approved Issues List would have been more appropriately raised early in the proceeding. As Enbridge has noted, these issues have been included as in the scope of similar recent expansion project Leave to Construct proceedings that utilised the exact same Issues List. It is unclear why Enbridge thinks the Issues List should be interpreted differently in this proceeding compared to other recent proceedings which used the exact same Issues list. Similarly, Enbridge made no mention of its concerns during the Discovery phase of the proceeding. It would be punitive and unfair to retroactively reduce Pollution Probe's Cost Claim after the fact when nothing was identified at any point during the proceeding that would merit such action.

The interrogatories flagged by Enbridge relate to the project need and consumer choice options for non-gas alternatives. Pollution Probe considered this information in conjunction with the Enbridge survey in providing comments related to the customer demand driving the project forecast over the 40 year revenue horizon. This has been a standard area of focus in recent Leave to Construct proceedings and it is unclear why this proceeding should be treated differently. If Enbridge believes that the OEB should interpret the Issues List in a different manner from other recent expansion Leave to Construct proceedings, this should be requested on a generic basis so that all proceedings can be approached in a consistent manner. Issues in this proceeding specifically assess the basis of Enbridge's estimates, forecast and costs.

Issue 1 on the Issues List for the proceeding specifically includes:

Has the applicant demonstrated that the project is needed? What factors are driving the need? (e.g., new customer demand, increased system capacity requirement, reliability of service, need for pipeline relocation, operational risks, integrity issues) Has sufficient evidence demonstrating need been provided (e.g., customer or volumetric forecast, system capacity analysis, engineering reports)?

Issue 3 on the Issues List includes:

3.1: Has the applicant provided sufficient information to demonstrate that the estimates of the project costs are reasonable? How do the costs of the project compare with recent similar projects, where applicable?

3.2: Has the applicant adequately identified and described any risks associated with the proposed project? Is the proposed contingency budget appropriate and consistent with these identified risks?

3.3: Has the applicant demonstrated that the project's economics meet the OEB's economic tests using the methodology outlined in EBO 188 or EBO 134, as

applicable? Where a contribution in aid of construction is required, is the amount of the contribution reasonable and consistent with OEB policies?

The basis for which Enbridge has forecasted that consumers in the community are likely to switch to natural gas, remain on natural gas and the related project economic forecast is specifically relevant to Issues 1 and 3 for the proceeding. Recognition of customer choice and non-gas alternatives directly relates to the issues on the Issues List. The OEB has previously reinforced the importance of customer choice and alternatives when forecasting natural gas customer demand and their likelihood of remaining on the gas system for the projected 40 year revenue forecast period³. To suggest that Enbridge's customer and revenue forecast is out of scope for the proceeding is simply absurd. Additionally, 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 gas⁴. The OEB Decision in this proceeding acknowledges the relevance of customer choice, DSM and non-gas alternative issues surrounding the project forecast and the risk related to project economics over the 10 year Rate Stability Period and beyond.

Other Comments

The time included in the Pollution Probe Cost Claim is reasonable and in alignment with costs approved by the OEB⁵ where a similar range of issues were assessed. Pollution Probe notes that it was the only intervenor to focus on environmental and socio-economic issues under Issue 4 (Environmental Impacts) on the OEB Issues List for the proceeding. This is a significant and important set of issues and OEB's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (Environmental Guidelines) outline the ranges of environmental and socio-economic issues that must be considered for each individual project. Although there are some commonalities to expansion projects supported under the Natural Gas Expansion Program (NGEP), every Leave to Construct project and its Environmental Report is unique in its assessment and proposed mitigation for environmental and socio-economic impacts. It is logically expected that there would be variability in the amount of evidence submitted and time allocated based on these factors. When environmental and socio-economic issues are not properly considered, it can lead to significant risk, impacts and costs. Pollution Probe processed a large amount of evidence in the proceeding and efficiently focused on the areas of most residual risk in its submission. Enbridge and the OEB has confirmed the importance of addressing impact mitigation of the residual risks for this project as identified in the Environmental Report when Enbridge creates the Environmental Protection Plan (EPP) required prior to construction⁶.

The Environmental Report more than **doubled** the amount of evidence filed by Enbridge in its Application⁷. Through the discovery and evidence analysis process Pollution Probe was able to

³ Including in EB-2022-0200 Phase 1 and all recent expansion project Decisions.

⁴ EB-2023-0261 dec_ord_ EGI Neustadt NGEP_20240523, Page 19.

⁵ For example, the OEB EB-2019-0187 Saugeen expansion Leave to Construct had environmental and socio-economic issues in a similar range to this project and resulted in full Cost Claim approval by the OEB in the same range.

⁶ Item 4 on the OEB Conditions of Approval for the Project and as committed by Enbridge in Exhibit I.PP.20

⁷ The Application was 219 pages (slightly less without the cover letter) and excluded Exhibit F-1-1 (Environmental Report) which was filed separately. The Environmental Report filed was 375 pages filed separately which more than doubled (170% more) the amount of evidence relevant to Pollution Probe.

rationalise the relevant environmental and socio-economic mitigation risks down to an efficient narrow list which Enbridge confirmed it would address in its EPP prior to construction.

Pollution Probe submits that it participated responsibly throughout this proceeding and requests that the OEB approve its Cost Claim as filed. Applying a prorated theoretic discount ignored the basis on which the Cost Claim was developed.

Respectfully submitted on behalf of Pollution Probe.

A handwritten signature in black ink, appearing to read "Mike Brophy", is written over a horizontal line.

Michael Brophy, P.Eng., M.Eng., MBA
Michael Brophy Consulting Inc.
Consultant to Pollution Probe
Phone: 647-330-1217
Email: Michael.brophy@rogers.com

Cc: Enbridge Regulatory (via EGRegulatoryproceedings@enbridge.com)
Richard Carlson, Pollution Probe (via email)