Elson
Advocacy

June 24, 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-2023-0201 – Enbridge Gas – Eganville Gas Expansion Project

I am writing on behalf of Environmental Defence to provide a response to Enbridge's cost claim objection. Enbridge repeats the same arguments it made in the Neustadt case. Rather than repeat ourselves in responding to those, we have attached our submissions in the Neustadt case and ask that the OEB refer to those.

In addition, Enbridge cites a quote by an Environmental Defence staff person about its opposition to Enbridge and methane gas as proof of some sort of wrongful or inappropriate conduct in these proceedings. However:

- It is not somehow wrongful to oppose the combustion of fossil fuels or to express opposition to Enbridge.
- Enbridge took the words out of context from a webinar about Bill 165.
- The webinar included critiques of Enbridge's actions, such as its deceptive marketing and its attempts to obtain subsidies from existing customers to fund the expansion of its fossil fuel pipeline system. That is not improper.
- Enbridge misattributes the quote as being a statement by Environmental Defence's Executive Director, which it is not.

Enbridge also uses wording in its letter to suggest that Environmental Defence has acted irresponsibly, such as referring to Environmental Defence's "tactics" and its "pattern of conduct." However, Environmental Defence has acted responsibly throughout. For example, it has met or beat all deadlines. It filed final submissions in most of the gas expansion cases long before they were due. In the review motion regarding the Hidden Valley and Selwyn cases, the review panel held that the motion raised "relevant issues material enough to warrant a review of the decision."[1] Raising material issues is a standard part of the regulatory process – not some sort of improper "tactic."

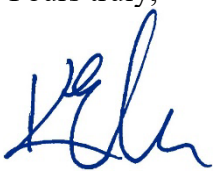
[1] EB-2023-0313, Decision and Order, December 13, 2023, p. 8.

Elson Advocacy Professional Corporation
Kent@ElsonAdvocacy.ca
1062 College St., Toronto, ON M6H 1A9
tel: 416 906-7305
fax: 416 763-5435

Enbridge also raises concerns about the regulatory costs of the 18 gas expansion cases that have yet to be filed with the OEB. It is highly unlikely that there will be an additional 18 OEB proceedings.[2] In any event, if Enbridge wishes to reduce the costs of however many proceedings will take place, it could seek leave to file them as a single application or a small number of combined applications.

Environmental Defence requests that the very modest cost claims in these proceedings be granted in full.

Yours truly,



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cc: Applicant

[2] Many Phase I projects have not proceeded and one would not expect Phase II to be different. Also, the government has announced a plan to except certain smaller projects from the need to obtain leave to construct.

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June 11, 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-2023-0261 – Enbridge Gas – Neustadt Gas Expansion Project

I am writing on behalf of Environmental Defence to provide a response to Enbridge's cost claim objections. Although Enbridge does not ask for a reduction in Environmental Defence's costs, a large portion of its letter criticizes Environmental Defence's participation in this proceeding, which requires a response.

Enbridge appears to be using the cost claim process as retribution against intervenors who are challenging Enbridge's gas expansion projects and seeking orders that Enbridge be held liable for shortfalls that may arise from these expansion projects. That is why Enbridge has provided five pages of detailed objections in this case, much of it targeting Environmental Defence, despite our cost claim being a mere $3,864.04. In contrast, Enbridge submitted only a four-page letter on costs with respect to the $3.6 million sought by intervenors in Phase I of its rebasing hearing. The fact that Enbridge is spilling more ink over $3.8 thousand in costs versus $3.6 million in costs suggests that its true motives in this case are not cost savings.

Enbridge states that Environmental Defence "has reduced its cost claim relative to previous NGEP project proceedings." This is incorrect. Environmental Defence has not applied any reduction to its cost claim. We have claimed the hours we expended on this particular application. Those hours were lower than the Bobcaygeon case because the Bobcaygeon case proceeded earlier and due to factors such as Enbridge delays in the Bobcaygeon case.

Enbridge argues that Pollution Probe's costs should be disallowed in part based on a comparison with Environmental Defence's costs. This is unfair and inappropriate, including for reasons set out in Pollution Probe's costs submissions. In addition, Environmental Defence's cost claim is unusually low due to efficiencies we were able to find. Our unusually low cost claim is not an appropriate yardstick to measure Pollution Probe's costs.

Enbridge objects to Environmental Defence's costs in the "discovery" category. However, Environmental Defence's costs this category are extremely low – just over $2,000. There is no basis to argue that Environmental Defence's discovery costs are too high. In addition, the "discovery" cost category is not limited to interrogatories. It also includes "read and research

Elson Advocacy Professional Corporation
Kent@ElsonAdvocacy.ca
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tel: 416 906-7305
fax: 416 763-5435

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.

Enbridge criticizes Environmental Defence for submitting interrogatories that replicated or were similar to interrogatories in previous gas expansion proceedings. However, 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.

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".[1]

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

[1] EB-2023-0313, Decision and Order on Cost Awards, March 5, 2024, p. 3.