



Ms. Nancy Marconi
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Ontario Energy Board
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July 19, 2024

**EB-2023-0200 Sandford Community Expansion Project Leave to Construct
Pollution Probe Cost Claim Reply**

Dear Ms. Marconi:

Pollution Probe is in receipt of Enbridge's letter dated July 18, 2024 related to Cost Claims for the above-noted proceeding. Pollution Probe provides the following comments in relation to its Cost Claim and in response to comments submitted by Enbridge.

General Comments and OEB Recommendation

Most importantly, Pollution Probe is interested in promoting and supporting a fair, efficient and cost-effective approach for System Expansion Leave to Construct applications that protect the public interest (in the short and long term), provide transparent and objective evidence to support the OEB considerations, and align with regulatory and policy requirements. Pollution Probe has supported natural gas infrastructure and expansion when objective evidence provided clearly indicates that the project is the best option from an Ontario energy consumer, societal and policy perspective. Broad based expansion that has not been properly tested poses risks that can be avoided if proper consideration of the facts is conducted.

It is important to separate retrospective conjecture in the July 18, 2024 Enbridge letter from facts and proper context. Enbridge surmises that Pollution Probe has requested that the OEB approve non-gas alternatives (e.g heat pumps) instead of the request made by Enbridge.

Enbridge has incorrectly surmised the purpose of the information Pollution Probe requested and by doing so has extrapolated that it must be out of scope for project consideration. The facts are clear and stand on their own. Additionally, at no time during the proceeding was any concern raised by Enbridge on the scope or duplication across this or other discrete Leave to Construct applications. To the contrary, when parties suggested a consolidated approach or to leverage evidence across the proceedings, Enbridge contested that more efficient approach. It is tempting to reinterpret history, but the facts are the facts. Despite Enbridge's ongoing objections to parties referring to evidence on the public record in other similar proceeding (including in its July 18th Cost Claim Objection), it is particularly confusing why Enbridge has now chosen to submit information from other proceedings in its letter for this proceeding.

There have been a record number of expansion projects filed by Enbridge in a short period (per the list provided by Enbridge) and although Enbridge did not state it in their letter, more of the same NGEP Expansion applications will come in the next 12 months. If the OEB and stakeholders were made aware in advance how many similar applications would be filed over the past 12 months, it would have been more logical and efficient to combine these applications into one joint proceeding to reduce overlap of issues, discovery, submissions and other elements of the typical OEB process.

Pollution Probe recommends that the OEB combine all remaining Expansion (NGEP) project Leave to Construct applications in 2024 into a single proceeding to avoid the issues retrospectively identified for nine recent proceedings that Enbridge has identified. The same should be done for all Expansion (NGEP) applications in 2025. A more structured, transparent and efficient approach would avoid many of the challenges encountered in the recent Expansion applications.

Each successive letter from Enbridge escalates the rhetoric on retroactive and completed processes that nobody can change at this point. Progress is about setting the right foundation and transparent path into the future, where actions and intentions really matter. It is also important to consider the context of the process and related cost claim requests. The cumulative Cost Claims are a very small fraction of the project costs (0.024%¹) and also much smaller than the costs of Enbridge related to the proceeding. There are net benefits (financial and non-financial) as a result of Pollution Probe's participation in the proceeding that exceed the costs of participation. For example, the OEB Decision in this proceeding confirmed the uncertainty in the project forecast to deliver on a Profitability Index of 1.0 or greater, even with the significant ratepayer subsidies already provided. Pollution Probe believes that the economic benefits (avoided costs) to ratepayers as a result of this proceeding could be even greater should Enbridge decide to request additional ratepayer funding to cross-subsidize the project. It will be more difficult for a future OEB panel to disallow additional project costs if the risks have not been thoroughly documented for Enbridge before they proceed with the project. The risks highlighted by Pollution Probe are now clearly the responsibility of Enbridge to mitigate given full knowledge at this time. Enbridge will need to clearly justify the supplement request for additional ratepayer funding to bridge project profitability when they clearly knew the forecast/profitability risks and gaps prior construction.

Specific Comments in Response to Enbridge's Cost Objection

The Enbridge letter dated July 18, 2024 is essentially a duplicate of the letters it submitted in EB-2023-0261 and EB-2023-0201, although the tone and aggression has escalated since Enbridge recently started to employ this tactic. Enbridge has increased its request to a 75% disallowance in the Application & Evidence Review (noted as Discovery by Enbridge) costs submitted by Pollution Probe, even though Enbridge premises its argument on the same suggested basis as the previous two objection letters. There are no changes suggested by Enbridge for any other category of costs, including the Written Submission. The recent approach in Enbridge's Cost Claim objection appears to be a new tactic by Enbridge to contest the cost claim following completion of a proceeding if an Intervenor questions the basis of its forecast and consumer choice options contrary to the Enbridge evidence submitted in support of the system expansion application. Given the replication of this tactic and language by Enbridge, the OEB will notice that the issues and response for EB-2024-0261 and EB-2023-0201 is essentially the same for this response. If there is any basis for a change in approach compared to the

¹ Claim Costs (\$17,624.63) / Project Costs (\$7,202,770) = 0.024%

process historically approved by the OEB, Pollution Probe suggests that a prospective generic process be used to consider new issues rather than retroactively apply it to proceedings that are complete.

The OEB previously noted in response to Enbridge's Cost Claim Objection for a recent system expansion related proceeding that:

"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".²

Enbridge's tactic is a regulatory strategy and does not just affect the facts in this proceeding (which is complete), but is a systematic attempt to undermine full participation in similar future proceedings. Proceedings that do not have robust Intervenor participation have resulted in a less complete and transparent record³. Reducing recovery of costs incurred after the fact undermines this important element of the process and discourages overall participation. Enbridge's suggestion of a reduction to 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 general assertions are dealt with in the response below. Pollution Probe notes that the time and related costs (simply actual time using the OEB approved rate schedule) included in its Cost Claim are reasonable and responsible. Pollution Probe strongly disagrees with a retrospective disallowance or prudently incurred costs and requests that the OEB approve the Pollution Probe Cost Claim as filed.

Enbridge Issues

Enbridge Issue #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 parties different participation in the proceeding and the individual basis included in each discrete Cost Claim. As noted by Enbridge, Environmental Defence took a consolidated approach across application. Pollution Probe approached this proceeding as discrete, as suggested by Enbridge and ultimately decided by the OEB.

As previously noted by Enbridge and reinforced 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

² EB-2023-0313, Decision and Order on Cost Awards, March 5, 2024, p. 3.

³ For example, \$9 million in costs were avoided in the EB-2020-0065 Leave to Construct due to Intervenor participation and the project was withdrawn by Enbridge. These ratepayer savings would not have occurred otherwise.

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.⁴

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 treating this and other concurrent Leave to Construct proceedings as distinctly separate and independent. Of course it is more efficient and less repetitive to treat all concurrent expansion applications in a joint manner. For Enbridge to criticize Environmental Defence for a consolidated approach across Expansion proceedings and then in the same breath criticize Pollution Probe for the incremental effort involved in treating this proceeding as discrete appears vindictive, particularly at this stage of the proceeding.

Also of interest is Enbridge's criticism of the lack of duplication and reduction workload for OEB Staff interrogatories. Issues were efficiently addressed across participants based on their focus and expertise available. It is ideal when duplication is minimized with OEB Staff and other participating parties. It seems strange that Enbridge is attempting to criticize parties when they attempt to do exactly that.

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

Also as noted above, Enbridge has suggested in this and concurrent 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 proceedings⁵. 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 Expansion proceedings. It is inappropriate for Enbridge to suggest that Pollution Probe should be penalized by following a process that Enbridge itself requested in the proceeding.

A significant strength of the OEB process is that it is an open, fair and transparent process that enables full stakeholder participation and results in a fact-based Decision. Allowing the perception of Applicants to 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 Enbridge letter. Enbridge has also incorrectly surmised the purpose of questions related to non-gas alternatives. Pollution Probe is not asking the OEB to order in this proceeding installation of non-gas alternatives like heat pumps, but

⁴ EB-2023-0261 EGI Reply Submission, paragraph 9.

⁵ Too 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.

simply factually illustrating that more cost-effective options are available that will impact gas adoption and that Enbridge has not adequately considered that reality in their profitability assumptions. Pollution Probe believes that the OEB understands that fact in this proceeding based on the Decision and useful wording included. Pollution Probe also recognizes that the OEB added the consumer information issue to the EB-2024-0111 (Rebasing Phase 2) in order to consider the information provided to consumers in a more consolidated manner. This aligns with Pollution Probe's recommendations.

Any opinions related to proceeding scope and the OEB approved Issues List would have been more appropriately raised by Enbridge during the proceeding rather than retroactively at this stage. Enbridge had every option available to indicate concerns during the proceeding, yet chose not to.

As previously noted, these exact same issues have been included as in the scope of other 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.

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 period⁶. 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 gas⁷. 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 OEB⁸ where a similar range of issues were assessed. Pollution Probe's focus was discrete and complimentary to other participating stakeholders. 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 analysed 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 construction⁹.

The Environmental Report more than tripled the amount of evidence filed by Enbridge in this specific Application¹⁰. Following review and assessment of the detailed Environmental Report (included in the Application & Evidence Review category), Pollution Probe appropriately rationalized the most relevant risks to an efficient narrow list which Enbridge confirmed it would address in its EPP prior to construction.

⁶ Including in EB-2022-0200 Phase 1 and all recent expansion project Decisions.

⁷ dec_order_EGI_Sandford_NGEP_20240704, Page 23.

⁸ For example, the OEB EB-2019-0187 Saugeen expansion Leave to Construct Environmental Report (i.e. environmental and socio-economic issues) were in a similar range to this project and resulted in Cost Claim approval by the OEB for the incremental Application & Evidence Review.

⁹ Item 4 on the OEB Conditions of Approval for the Project.

¹⁰ The Application was 224 pages excluding the Environmental Report and just over 650 pages with the Environmental Report.

Pollution Probe submits that it participated responsibly throughout this proceeding and requests that the OEB approve its Cost Claim as filed. In Pollution Probe's submission, retrospectively applying a prorated discount after the proceeding is punitive and inappropriate.

Respectfully submitted on behalf of Pollution Probe.

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

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