

Ms. Nancy Marconi
Registrar
Ontario Energy Board
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Toronto, ON M4P 1E4

August 7, 2024

**EB-2024-0186 - Review of Bobcaygeon Gas Expansion Decision (EB-2022-0111)
Pollution Probe Submission**

Dear Ms. Marconi:

Pollution Probe is in receipt of the Notice for EB-2024-0186 pertaining to the Federation of Rental-housing Providers of Ontario (FRPO) Notice of Motion requesting that the OEB review a portion of the OEB's final decision granting Enbridge Gas's (Enbridge) application for leave to construct of natural gas pipelines in the City of Kawartha Lakes (including Bobcaygeon) and Township of Cavan-Monaghan (Enbridge's Bobcaygeon community expansion project).

The FRPO Notice of Motion requests:

- 1) A review and variance of the portion of the Bobcaygeon decision dated May 14, 2024 approving the Reinforcement Pipeline.
- 2) An order that the motion raises issues material enough to warrant a review of the decision on the merits thus satisfying the "threshold test" in Rule 43.01 of the OEB's Rules of Practice and Procedure (Rules) in relation to approving the Reinforcement Pipeline.
- 3) In the alternative to 1), that a stay be invoked on the portion of the decision relating to the Reinforcement Pipeline, allowing time for a technical conference and other procedural steps the OEB believes are warranted to make a fully informed decision on the need for and timing of the Reinforcement Pipeline.

Enbridge suggests that the FRPO Motion effectively seeks to re-litigate aspects of the LTC proceeding and decision for the Bobcaygeon Project which FRPO disagrees with, including the way the OEB assessed and weighed evidence¹. This is clearly incorrect. In fact, this is not a re-litigation of the Decision based on the evidence on the record, but specifically relates to a failure of the OEB to allow an adequate process to assess the need for the Reinforcement portion of the project and ensure adequate evidence was provided by Enbridge to support the need for this portion of the project. Declining the stakeholders request to hold a technical conference was a clear error in this proceeding. Despite this proceeding being conducted independent from several other concurrent expansion project proceedings, it appears that important project specific considerations were not adequately assessed that may have resulted in the Reinforcement being denied at this time.

¹ EGI_Ltr_FRPO_ED_Motion_20240618_eSigned

The OEB reasoning behind denying the requested Technical Conference is:

A technical conference and/or oral hearing would have limited probative value given the opportunity for discovery through the interrogatory process. A technical conference and/or oral hearing would also cause further and unnecessary delays to this proceeding. These delays would be counterproductive to the timing and costs of construction and not in the best interests of customers.²

Enbridge is responsible for the delays in the proceeding³ and denying an adequate process of discovery in this proceeding to stakeholders led to OEB approval of a Reinforcement that is not required at this time and at an estimated costs of over \$10 million⁴. The OEB has included a Technical Conference in many Leave to Construct proceedings to allow adequate discovery and the obligation ratepayer and public interest was not served by denying one in this proceeding. Enbridge may suggest that this decision is just part of the broader group procedural treatment from other concurrent expansion proceedings. However, this is a discrete project application and consideration of this discrete project should not be disregarded simply because Enbridge chose to file several other discrete expansion projects concurrently. The problems and impacts related to dealing with many concurrent expansion applications have been well documented and do not need to be duplicated.

The OEB did acknowledge stakeholder concerns with the inadequacy of the public record to support the need for the Reinforcement portion of the project, specifically:

FRPO made submissions regarding the technical pipeline parameters for the Project, arguing that Enbridge Gas did not justify its proposed reinforcement pipeline that is part of the Project and questioning the future need of the reinforcement pipeline. FRPO submitted that the proposed supply lateral can supply the demand forecasted for the first 10 years of the Project and that the reinforcement pipeline is not required.⁵

The basis that the OEB used to dismiss parties' request for a Technical Conference is not reasonable given the facts of this specific proceeding. Similarly, when parties challenged the evidence on the public record in support of the Reinforcement portion, the OEB dismissed stakeholder concerns without any supporting evidence other than Enbridge's own opinion that the Reinforcement is needed to serve Enbridge's forecasted peak load by year 40 as determined by Enbridge's own customer survey and load forecast. It is Enbridge's responsibility to include sufficient detailed evidence in support of its application and when Enbridge fails to do so in its application, it is the OEB's responsibility to ensure that the process allows proper discovery to test those assumptions. No detailed information was provided to support the actual need for the Reinforcement, despite continuous request throughout the proceeding.

Based on the public record in this proceeding, the OEB gave little to no consideration to test the need for the Reinforcement portion of the project and simply took Enbridge's word that it is needed. There were many areas of uncertainty⁶ related to the project and particularly the need for the incremental Reinforcement. The OEB did recognize in its Decision the responsibility for Enbridge to carry the risk

² Decision_Procedural Order 2_EGI Bobcaygeon NGEP_LTC appn_20240220, Page 23

³ Related to the Abeyance and by not providing adequate evidence in response to stakeholder concerns, despite having adequate time to do so.

⁴ Exhibit E, Tab 1, Schedule 1, Page 1 indicates an estimate of \$9.7 million of direct costs and as outlined by Environmental Defence in its Submission, the actual estimate is much greater when considering related costs.

⁵ dec_order_EGI_Bobcaygeon NGEP_20240514_eSigned, Page 15.

⁶ Including the survey results, consumer choice of alternative to what Enbridge proposed and load forecast including the impacts of DSM which was excluded in this application.

related to its survey, forecast and project costs so that ratepayers do not carry costs and risk related to pipelines that are not required or are underutilized. Specifically, the OEB indicated in its Decision:

The OEB, in approving Enbridge Gas's application of leave to construct, must ensure that the interests of all Enbridge Gas's customers are also protected. One pillar of that protection is the existence of the ten-year RSP in which Enbridge Gas is responsible for any shortfall in revenues to meet its revenue requirement. This provides some insulation against possible under achievement of its customer sign-up estimates or projected natural gas consumption.

In the first rebasing following the expiration of the RSP, the OEB will review the actual project costs and revenues and determine what amount should be recognized in rates. The subsidy or contribution to the expansion of service provided in O. Reg. 24/19 is specific and limited and does not abrogate the general principles of utility cost allocation going forward. All options will be available to the OEB in the rebasing following the conclusion of the RSP with respect to the appropriate rate treatment of potential capital cost overruns and/or lower than forecast customer attachments/volumes (and associated revenues). Enbridge Gas is not guaranteed total cost recovery if actual capital costs and revenues result in an actual PI below 1.0.⁷

Confirming the risk to Enbridge over the ten year RSP and the potential for a future OEB panel to disallow actual costs pertaining to the project is not a replacement for enabling a fair procedural process and ensuring that evidence provides the facts needed to support Enbridge's suppositions. By approving the Reinforcement without adequate process and evidence to support its need, the OEB has approved Enbridge Capital that is not required⁸ and will become a stranded asset as soon as it is commissioned.

Respectfully submitted on behalf of Pollution Probe.



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⁷ dec_order_EGI_Bobcaygeon NGEP_20240514_eSigned, Page 25-26.

⁸ Enbridge confirmed that the Reinforcement is not required on project commissioning, only by year 40 based on Enbridge assumptions and analysis not included on the record. Based on the submissions of stakeholders, this Reinforcement will not be required even in year 40, meaning it is a stranded asset from the date of commissioning.