

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

August 7, 2024

**EB-2024-0197 – Environmental Defence Amended Notice of Motion
Pollution Probe Submission**

Dear Ms. Marconi:

Pollution Probe is in receipt of the Notice for EB-2024-0197 pertaining to the Environmental Defence (ED) Notice of Motion for four system expansion Leave to Construct proceedings, more specifically EB-2022-0111, EB-2023-0200, EB-2023-0201 and EB-2023-0261.

The ED Amended Notice of Motion¹ requests:

- 1) An order cancelling the final decisions in EB-2022-0111 (Bobcaygeon, dated May 14, 2024), EB-2023-0200 (Sandford, dated July 4, 2024), EB-2023-0201 (Eganville, dated May 30, 2024), and EB-2023-0261 (Neustadt, dated May 23, 2024) (collectively, the “Final Decisions”);
- 2) An order cancelling the decisions on evidence and further discovery dated February 20, 2024 in EB-2022-0111 (Bobcaygeon) and dated February 29, 2024 in EB-2023-0200 (Sandford), EB-2023-0201 (Eganville), and EB-2023-0261 (Neustadt) (collectively, the “Evidence Decisions”);
- 3) An order varying or cancelling the decisions on evidence and further discovery
- 4) An order that the evidence proposed by Environmental Defence and Elizabeth Carswell is admissible;
- 5) An order that the proposed evidence is eligible for cost recovery subject to the normal criteria and review of intervenor cost claims;
- 6) An order that a technical conference shall be held these proceedings;

Enbridge suggests that the ED Motion is part of a pattern of repeated attempts by ED to introduce evidence related to non-natural gas alternatives within Natural Gas Expansion Program (“NGEP”) and suggests that it has no merit given the outcomes of the previous attempts². Enbridge has missed the point and the direct link to the Issues List for these proceedings. ED is not requesting approval of alternatives to natural gas in its Motion as Enbridge seems to suggest. The Motion applies to the project(s) need and suggest that if more objective and accurate information (i.e. provided by a party other than the Applicant) had been allowed in the proceedings, this would have been procedurally fair

¹ ED_AmendedMotionReReview_20240729

² EGI_Ltr_FRPO_ED_Motion_20240618_eSigned

and would have led to a more factual, accurate, complete and less biased record for which to consider the applications. This is self-evident and indirectly reflected in the OEB Decisions for these proceedings.

Pollution Probe understands the confusion and inefficiency created when Enbridge filed several concurrent expansion project applications without any consideration of what elements of those projects are unique and which issues needed a common consideration. A consolidated approach would have been more efficient and in the public interest, but given that these applications proceeded individually, each needs to be considered. Proposing that the ED Motion be dismissed on face value without specific consideration of the request and supporting basis is not proper protocol or in alignment with OEB procedures. The OEB has recognized that intervenors have the same right as Enbridge to submit motions and each needs to be assessed on their individual basis.

Pollution Probe believes that there is sufficient basis presented by ED for the OEB to proceed with consideration of the Motion on the basis presented by ED. Pollution Probe submits that parties other than Enbridge should have been provided the ability to submit evidence related to the needs for the projects³ in the proceedings. Restricting that right was procedurally unfair and led to a biased public record and outcome. Declining the stakeholders request to present evidence was a clear error in those proceedings. A different procedural approach leading to more objective evidence would have had a material impact on these proceedings. Similarly, providing the ability for discovery through a Technical Conference would have provided greater transparency and access to facts on which the OEB could have considered in its Decisions. There was insufficient basis to deny these requests.

The OEB has included the ability to provide evidence and a Technical Conference in many Leave to Construct proceedings to ensure an objective and adequate record of facts. The obligation ratepayer and public interest was not served by denying these procedural steps in these proceedings.

The OEB did recognize in its Decisions the limits of the record and the responsibility for Enbridge to carry the risk 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 Decisions:

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

³ Including survey results and information pertaining to a relevant customer/revenue forecast.

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 1.0.⁴

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 adequate evidence can provide the facts in the proceeding.

Respectfully submitted on behalf of Pollution Probe.



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⁴ Example from dec_order_EGI_Bobcaygeon NGEP_20240514_eSigned, Page 25-26, but duplicative wording leveraged across the expansion project Decisions.