

Elson Advocacy

August 25, 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: Reviews of Decisions in Bobcaygeon, Sandford, Eganville, and Neustadt Gas
Expansion Projects (EB-2022-0111; EB-2023-0200/0201/0261)
Review Motion File #: EB-2024-0186 & EB-2024-0197**

I am writing on behalf of Environmental Defence pursuant to *Procedural Order #2* to provide submissions on the requests for stays in the above matters.

Environmental Defence's submissions regarding a stay in the Bobcaygeon project are contained in our letter of August 14, 2024, which is attached for ease of reference.

Regarding the request for a stay of the Sandford decision by Ms. Carswell, Environmental Defence submits that a stay is warranted. Almost all of the reasons set out in our letter of August 14, 2024 apply with respect to the Sandford project, with the only difference being that the Bobcaygeon reinforcement pipeline may never be used and useful if the increased demand does not warrant the increase in capacity. Although the Sandford project does not share in that consideration, a stay is also warranted for additional reasons in that case as set out by Ms. Carswell.

Thank you for the OEB's consideration of these matters.

Yours truly,



Kent Elson

cc: Parties in the above proceeding

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Dear Ms. Marconi:

**Re: Reviews of Decisions in Bobcaygeon, Sandford, Eganville, and Neustadt Gas Expansion Projects (EB-2022-0111; EB-2023-0200/0201/0261)
Review Motion File #: EB-2024-0186 & EB-2024-0197**

I am writing on behalf of Environmental Defence to request that the OEB issue a stay of the Bobcaygeon decision (EB-2022-0111) with respect to the reinforcement pipeline that was approved in that decision. We seek this stay in relation to the motion filed by the Federation of Rental Housing Providers of Ontario (“FRPO”) in EB-2024-0186 and the motion by Environmental Defence in EB-2024-0197. A stay is warranted because there is no urgency from a safety or reliability perspective and there is no way to “un-build” the pipeline if the OEB ultimately decides that the reinforcement pipeline is not needed.

There is no urgency in relation to the Bobcaygeon gas expansion project, especially the reinforcement pipeline aspect of that project. The Bobcaygeon gas expansion project is not required for safety or reliability. Also, residents in these communities can already obtain less expensive heating by installing an air-source heat pump.¹ Furthermore, the deadline for participation in the Natural Gas Expansion Program is very far away. The program merely requires that Enbridge submit an application for leave to construct before December 31, 2025.² Enbridge has already met this deadline for this project.

On the other hand, there are a number of significant harms that would result if the pipeline were to be built. Most obviously, the pipeline cannot be “un-built” once it has been constructed even if the OEB ultimately decides that the reinforcement pipeline is not required. If that were to occur, the construction of the reinforcement pipeline will have unnecessary impacts on the community and on the environment that cannot be undone.³

There will also be potential financial impacts for customers. Even if approval is ultimately not granted, Enbridge will likely seek recovery of the cost of the pipeline on the basis that it was constructed while approval was in place. Although the OEB could state that Enbridge assumes

¹ EB-2022-0200, Evidence of Chris Neme, May 11, 2023 (updated May 30th), Ex. M9, p. 23 ([link](#)).

² O. Reg. 24/19, s. 2(2).

³ EB-2022-0111, Exhibit F.

all financial risks for proceeding with a project despite the ongoing review motion, this would only reduce the financial harm to customers without eliminating it completely because the OEB cannot bind a future panel's determination on whether the costs can be included in rate base.

Proceeding with construction at this time could also raise significant logistical challenges if the review motion is granted. For example, that could occur mid-way through construction at a time that is inconvenient to stop work.

Furthermore, allowing Enbridge to proceed with the construction in this case where there is no urgency from a safety or reliability perspective would also set a negative precedent that would undermine the OEB review process.

Enbridge may argue that a stay is not available as it was not requested as part of Environmental Defence's original motion. However, a stay was requested in FRPO's motion. Furthermore, Environmental Defence was justified in not requesting a stay as we reasonably believed it would not be necessary based on past Enbridge practice. In the review motion regarding the Hidden Valley and Selwyn gas expansion cases, Enbridge halted construction and did not proceed until the completion of the review motions. We therefore reasonably believed that a request for a formal OEB stay would be unnecessary and would only serve to increase regulatory costs and unnecessarily consume OEB time and resources.

Environmental Defence has also taken steps to attempt to avoid the need for the OEB to issue a formal stay. For instance, we requested that Enbridge not proceed with construction in our letter of August 2, 2024. These efforts were not successful.

Enbridge may argue that costs will increase if construction does not proceed. With respect, if Enbridge was concerned about costs, it should have moved forward with its application far more expeditiously. The application was originally filed in 2022 and was held in abeyance for approximately one year at the request of Enbridge.⁴ In any event, it would always be cheaper and faster to forgo regulatory approvals. However, that does not justify allowing Enbridge to proceed with this non-urgent project when the regulatory process has not yet run its course.

Environmental Defence is seeking a stay with respect to the Bobcaygeon reinforcement pipeline in particular because it is the most obvious candidate for a stay. Environmental Defence believes it is disrespectful of due process and the OEB's regulatory system for Enbridge to be proceeding with any of the four projects under review in light of the lack of any urgency from a safety or reliability perspective. However, that concern is the most obvious with respect to the reinforcement pipeline as it could turn out to be completely unnecessary.

There is an unspoken assumption in Enbridge's actions in this proceeding that the OEB is certain to approve these projects because they are pursuant to a provincial government program. This is a serious misunderstanding of the government's policy, which requires that the OEB review these projects and does not mandate any abridgement of the regulatory process.⁵ Furthermore, the provincial government has approved specific costs and specific subsidy levels, not higher

⁴ EB-2022-0111, Decision and Order, May 14, 2024, p. 4.

⁵ O. Reg. 24/19, s. 2(1)(b).

subsidies that would result from revenue shortfalls.⁶ Further still, the review motions could result in additional conditions even if the approvals are upheld, such as a condition that Enbridge assume revenue shortfall risk. Again, the Minister of Energy's December 12, 2019 letter to the OEB requested "a demonstrated commitment by the proponent that it would be willing to be held to the project cost, timelines and volumes forecasts as set out in their project proposal."⁷ It would be wrong for Enbridge or the OEB to operate on the assumption that the underlying decisions must be and will be upheld in their entirety. A stay is warranted to let the regulatory steps run their course and to ensure that any final decisions are robust and based on the due process expected from a top-quartile regulator such as the OEB.

Yours truly,

A handwritten signature in blue ink, appearing to read 'K. Elson', written in a cursive style.

Kent Elson

cc: Parties in the above proceeding

⁶ O. Reg. 24/19, Schedule 2.

⁷ Minister of Energy, [Letter to the OEB](#), December 12, 2019.