

# Elson Advocacy

February 20, 2025

**BY RESS**

**Ms. Nancy Marconi**

Registrar

Ontario Energy Board

2300 Yonge Street, Suite 2700, P.O. Box 2319

Toronto, Ontario M4P 1E4

Dear Ms. Marconi:

**Re: Enbridge – Approval to Construct Gas Works in Tay Valley Township  
EB-2024-0342**

I am writing to respond to the letter of Enbridge Gas dated February 14, 2025, requesting that Environmental Defence be denied intervenor status in the above-referenced proceeding.

## **Interest and Perspective**

Enbridge argues that Environmental Defence should be denied intervenor status on the basis that it has insufficient interest in this proceeding. There is no basis for this assertion. As required by Rule 22, Environmental Defence has an interest or policy perspective relevant to the OEB's mandate and to the proceeding. That includes its interest in promoting both the public interest in environmental protection and the interests of consumers whose energy bills can be reduced through measures that lower both costs and environmental impacts, such as measures that lower financial risks to ratepayers from unwarranted spending on gas expansion.

This interest and policy perspective is directly relevant to this proceeding. Enbridge is seeking to extend the area in which it is approved to construct gas works in the Township against the wishes of the Township. Approvals to construct gas works have clear environmental implications because methane gas is a potent greenhouse gas that causes climate change when it leaks from gas works or is combusted. The combustion of gas causes one-third of greenhouse gas emissions.

This proceeding is also relevant to Environmental Defence's interest and policy perspective of promoting measures that simultaneously benefit energy consumers and the environment. That is because the construction of new gas works raises financial risks for existing gas customers in that they may become stranded or underutilized assets due to the energy transition before they have been fully depreciated.

Environmental Defence's interests and perspective are particularly implicated by this proceeding as it is the first instance in which a municipality is opposing approval to construct gas works under s. 8 of the *Municipal Franchises Act* on grounds relating to the energy transition. It is

important that the OEB have a variety of perspectives when adjudicating these issues for the first time, including the knowledge, perspectives, and expertise of Environmental Defence relating to the energy transition.

## Scope

Enbridge inaccurately describes the scope of this proceeding. For instance, it describes the proceeding as being “administrative” and “an application to ensure that the boundaries of an existing CPCN accurately reflects the result of a municipal amalgamation in an area of the province where no other gas distributor operates.” Enbridge’s characterization of the scope is inaccurate because it is seeking to *expand* the area in which it has authorization to construct gas works over objections from the Township relating to the energy transition.

The OEB’s mandate under s. 8 of the *Municipal Franchises Act* is important and not merely administrative. The importance of this mandate is support by the requirement in the *Act* that the OEB hold a public hearing (per s. 8(3): “no such certificate shall be granted or refused until after the Board has held a public hearing”).

The OEB also has broad jurisdiction to consider relevant factors under s. 8 of the *Municipal Franchises Act* and is required to consider those factors. This is reflected proviso in s. 8 that “approval shall not be given unless public convenience and necessity appear to require that such approval be given.”

Enbridge incorrectly states that “ED is seeking to turn the simple request in this proceeding into a broad examination of complex and wide-ranging questions.” That is incorrect. The scope of this proceeding is clearly restricted to whether public convenience and necessity require that Enbridge be approved to construct gas works in a wider area within the Township.

Enbridge also incorrectly states that “ED is seeking outcomes that could have broad implications on Enbridge Gas and on communities and customers across Ontario.” Environmental Defence cannot change the nature of this case and does not seek to do so. Whether or not Environmental Defence intervenes, this will be an important case as the first instance in which a municipality has opposed relief under s. 8 of the *Municipal Franchises Act* on grounds relating to the energy transition. Although applications under s. 8 are typically approved as a matter of course, that is because they are typically unopposed. This current case is unlike the others that have come before it.

Enbridge’s arguments regarding scope are incorrect. If the OEB will be making a ruling regarding the scope of this proceeding, Environmental Defence asks that the parties be given an opportunity to provide submissions on that question, including reference to past cases that discuss the relevant considerations when assessing “public convenience and necessity.”

## Counsel

Enbridge makes includes incorrect accusations about other parties that counsel for Environmental Defence represented in two recent proceedings. Although these accusations are

improper and irrelevant to whether Environmental Defence should be granted intervenor status, a response is required.

Enbridge accuses a local resident's group that intervened in EB-2024-0134 of acting inappropriately. Enbridge inaccurately describes the group as being "vaguely described as a group of concerned residents" and implies that there were not *bona fide*. Details were provided regarding the residents group and their connection with the County in question, including that the group includes members of the local chapter of Seniors for Climate Change Now (SCAN!) who are Lennox and Addington County residents, as well as the name, address, and phone number of the community leader who had been designated as the lead for the group.<sup>1</sup>

Enbridge criticizes the group for withdrawing their objections in that case. This is backwards. The resident group was acting responsibly and efficiently by withdrawing its objections. This was not simply a change of heart as Enbridge suggests, but in response to the OEB's clarification on scope. The events are described in the OEB's decision in that case as follows: "By letter to the OEB dated January 6, 2025, Concerned Residents advised that, based on the further clarification of the scope of proceeding in Procedural Order No. 4, it no longer sought deviations from the Model and did not seek to participate in the upcoming hearing."<sup>2</sup> The residents group was acting responsibly and there is no basis to criticize them for that, particularly in the context of another proceeding in which they are not parties.

Enbridge also makes accusations relating to EB-2024-0188, stating that "ED's counsel similarly withdrew" an intervention in that case. This situation was dissimilar as the withdrawal occurred before any steps in the proceeding had taken place. Furthermore, Enbridge states that the withdrawal was motivated by an attempt to avoid "providing the OEB with clear information about how they had a substantial interest." That is false. The actual rationale for the withdrawal was described by the OEB in its decision in that case:

By letter to the OEB dated January 8, 2025, Zajdlik-eMerge advised that, in light of the scoping of issues by the OEB in a parallel proceeding filed under s. 9 of the *Municipal Franchises Act*, they wished to withdraw their request to intervene in this proceeding, noting that it "appears likely that a similar scoping decision would be made in this proceeding as it also involves a municipality that agreed to the model franchise

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<sup>1</sup> The following information was provided: "The group consists of local residents who are concerned about the financial and environmental impacts of methane gas distribution and combustion as well as the local chapter of Seniors for Climate Action Now (SCAN! Kingston). The residents and SCAN! members include municipal electors who would be directly impacted by the orders sought by the applicant, including the order pursuant to s.9(4) of the Municipal Franchises Act to dispense with the requirement to secure assent of the municipal electors of the County of Lennox and Addington. The group is not incorporated.

Eric DePoe has been designated as the lead for the group. His address is .... His phone number is .... His email address is ericdepoe@yahoo.ca. ...

Mr. DePoe is a paralegal and is very active in the community in the Lennox and Addington County area. He ran in the 2022 provincial election for the riding of Hastings-Lennox and Addington and received the second-most votes.

<sup>2</sup> EB-2024-0134, Decision and Order, February 11, 2025 (emphasis added).

agreement. This would render the key issues and arguments that Dr. Zajdlik and eMerge wish to raise as out of scope.”

Again, the proposed intervenors were acting responsibly and should not be criticized for withdrawing their request based on new information.

It is not clear why Enbridge is arguing that Environmental Defence should be denied intervenor status based on accusations against entirely different and distinct parties. It may be that Enbridge is implying that we, as counsel for Environmental Defence and these other parties, are irresponsible. However, we have acted responsibly for a variety of parties in over 70 OEB proceedings for approximately 15 years. Through that long period, our costs have never been disallowed by the OEB (e.g. as duplicative, unnecessary, etc.). In many cases, our legal costs are lower than other intervenors that have contributed less. In a 2021 Enbridge costs decision, the OEB specifically highlighted Environmental Defence's contribution, stating as follows: “Among the intervenors, the OEB found Environmental Defence’s expert witness supported intervention particularly efficient and responsive to the objective of the proceeding.”<sup>3</sup> As in past, Environmental Defence and its counsel would provide an efficient contribution that is responsive to the objective of this proceeding.

### **Late intervention request**

Enbridge argues that Environmental Defence's request should be denied because it is late. However, Enbridge does not respond to or even acknowledge the fact that there was no way for Environmental Defence to know the relevance of this proceeding until the Township filed its objection letter. Without the Township’s objection to the expanded approval to construct gas works, there would be no reason for Environmental Defence to intervene. Environmental Defence sought intervenor status on the same day that became aware of the Township’s letter.

Enbridge argues that there is prejudice because Environmental Defence is seeking to file evidence. This argument is flawed. There is no prejudice *arising from the timing* of the intervention request. For instance, Environmental Defence is not applying mid-process and asking that prior steps be redone. Although Environmental Defence is seeking to file evidence, it would have sought that regardless of the timing of the request. Enbridge’s argument would imply that late intervention requests must always be denied if the intervenor seeks to file evidence. There is no basis for that assertion, which is inconsistent with past OEB decisions and practices.

### **Evidence**

Enbridge opposes Environmental Defence filing evidence in this proceeding, arguing it is irrelevant. As noted in the intervention request, the proposed evidence relates to the financial and climate risks arising from the construction of new gas works. Enbridge is seeking approval to construct new gas works in an expanded area within the municipality. The relevance is clear.

Environmental Defence could have new evidence commissioned. We have not proposed to do that as that would result in cost and time that appear to us to be unnecessary. We believe the

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<sup>3</sup> EB-2021-0002, Decision and Order on Cost Awards, January 31, 2023, p. 3.

Energy Futures Group evidence from the rebasing proceeding would be sufficient. This would also be most efficiency because it has already been subject to interrogatories and cross-examination, it can be provided with no delay, and there would be no cost to produce the evidence.

In light of the above, we ask that Environmental Defence be granted intervenor status in this proceeding.

Yours truly,

A handwritten signature in blue ink, appearing to read 'K. Elson', with a stylized, cursive script.

Kent Elson

cc: Parties in the above proceeding