

Elson Advocacy

April 23, 2025

Nancy Marconi

Registrar

Ontario Energy Board

2300 Yonge Street, Suite 2700

Toronto, Ontario, M4P 1E4

Dear Nancy Marconi:

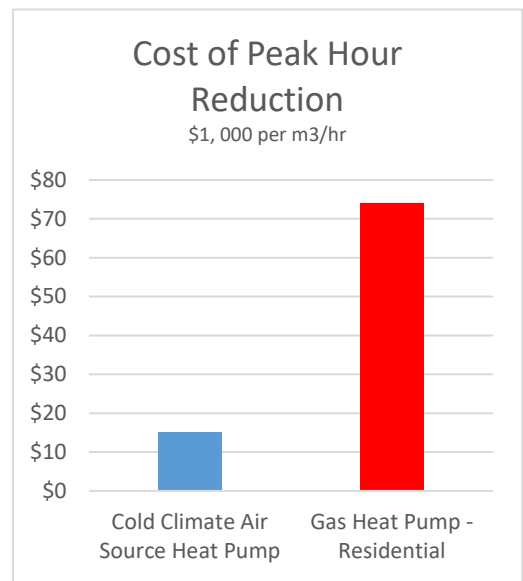
**Re: Enbridge Gas Inc. Integrated Resource Planning (IRP) Pilot Project
Ontario Energy Board File Number: EB-2022-0335
Review Motion of IRP Pilot Project Decision: EB-2025-0124**

I am writing on behalf of Environmental Defence respond to Enbridge's request that the OEB expand the scope of the review into the IRP Pilot Decision, issue a stay over certain aspects of the decision, and bar the original panel of commissioners from participating on the review panel. Enbridge's request to expand the scope of review is vague and unsubstantiated; its request for a stay fails to even set out the test for granting a stay, let alone discharge its burden to show that the test has been met; and its request that certain commissioners be barred from the review panel is founded on baseless complaints about legitimate comments made by the hearing panel about Enbridge's poor performance in implementing IRP and IRP pilots.

Scope of the Review

Environmental Defence submits that the scope of the review should not be expanded in the ways proposed by Enbridge.

For example, the scope should not be expanded to address "whether the OEB had and reviewed sufficient current evidence to support the finding in the Decision about the relative cost effectiveness of heat pumps." This proceeding arises from Enbridge's application and was entirely based on Enbridge's evidence. That evidence clearly showed reducing peak gas demand with a gas heat pump costs *five times* compared to an electric air source heat pump. This is shown in the figure to the right.¹ Enbridge cannot now argue that there was insufficient evidence to support that conclusion. If Enbridge believed that more evidence was required, it should have filed it at the time.



¹ JT1.4 (calculation: total cost divided by m3/hr reduction).

Stay

If the OEB will be considering whether to issue a stay, it should require that Enbridge provide submissions on whether the test for a stay has been met and provide an opportunity for other parties to make responding submissions.

The OEB recently set out the test for granting a stay in a review motion, stating as follows:

The test for granting a stay is set out in Canadian common law. In the 1994 *RJR-Macdonald* decision, the Supreme Court of Canada articulated a three-prong test for a stay which requires the moving party to demonstrate that: (i) there is a serious issue to be tried; (ii) the moving party would suffer irreparable harm if the stay were denied and; (iii) the moving party would suffer more harm if the stay were denied than the other parties would suffer (including the public interest) if the stay were allowed. The third prong is also expressed as the ‘balance of convenience’. All three prongs of the RJR test must be satisfied for the stay to be granted, and the onus of proof lies with the party requesting the stay. An overarching consideration in the assessment of these factors is whether it is ‘in the interests of justice’ that a stay be granted.²

The OEB was clear that the “onus of proof lies with the party requesting the stay.” Enbridge has clearly not met that onus. It has not addressed the three-part test or provided any evidence in support of its stay request. Although Enbridge notes the possibility of wasted planning efforts, that is a far cry from the kind of “irreparable harm” needed for a stay. It is difficult to understand how those costs would be material, let alone rise to the level of irreparable harm, particularly when Enbridge is expected to manage its operational costs within its budget. Nor does Enbridge address the harm that would arise from further delaying the approved pilot.

Although the OEB could simply dismiss the stay request due to Enbridge’s failure to meet its onus, Environmental Defence would not object to Enbridge being given a second chance if other parties are afforded an opportunity to respond.

Barring Commissioners

Enbridge asks that the members of the original hearing panel be barred from participating in the review panel. Putting aside whether it is appropriate for Enbridge to attempt to influence which commissioners will adjudicate its cases, its rationales are unfounded. Enbridge is concerned that the OEB panel in question made “gratuitous comments and criticisms that fall outside of the scope of the case.” That is incorrect.

Although the OEB expressed dissatisfaction with Enbridge’s performance regarding IRP, that was entirely within the scope of this proceeding and in fact reflects a very long history of the OEB expressing dissatisfaction with Enbridge’s performance regarding IRP. As outlined in Appendix A, the OEB has issued directive after directive, attempting to ensure that Enbridge actually implement IRP. It has also repeatedly found that Enbridge has fallen short of those directives.

The concerns expressed by the OEB Panel are entirely appropriate and accurate and cannot be relied on to bar their participation on the panel hearing this review. The OEB Panel was correct in pointing out that Enbridge has “fallen short on major deliverables”, is “well past the two-year target for the deployment of two pilot projects,” “has not brought forward a formal IRP plan to avoid, reduce, or delay infrastructure building,” and has yet to pilot use of its DCF+ test. This state of affairs is particularly concerning and relevant in light of the many directions issued to Enbridge regarding IRP as outlined in Appendix A. Enbridge may not be pleased with the OEB Panel highlighting how it has fallen short, but that does not make those findings “gratuitous comments and criticisms” as Enbridge alleges.

Furthermore, these comments were not out of scope. For instance, with respect to the orders and comments on the need for an additional pilot, Enbridge itself specifically requested “A determination that the SLH IRP Pilot Project scope and objectives, which include testing of a variety of IRPAs, satisfies the direction in the IRP Framework to bring forward two IRP pilot projects.”³

Environmental Defence is not making submissions on the appropriate composition of the review panel. We merely wish to respond to Enbridge’s comments on that topic, as they are entirely unfair and unjustified.

Conclusion

The power of the OEB to initiate a review of a decision of its own commissioners is weighty and should be exercised fairly and with care. Enbridge’s submissions do not reflect that. Its requests to expand the scope of this review, stay the OEB orders, and bar all of the original panel members from sitting on the review panel should not be accepted.

Yours truly,

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

Kent Elson

² EB-2024-0186, EB-2024-0197, OEB, *Decision and Order*, April 1, 2025.

³ Enbridge Gas Argument in Chief, September 24, 2024, Page 21.

APPENDIX A: SUMMARY OF OEB DIRECTIVES RE IRP

The Board has directed Enbridge to practice Integrated Resource Planning many times over the past 30 years.⁴ These directions date back to the OEB's IRP proceeding in the early 1990s.⁵ This summary will focus on the directions provided by the OEB over the last decade. Through these directions, the OEB has repeatedly highlighted the importance of IRP, expressed concerns about the lack of progress by Enbridge in this area, and directed Enbridge to do IRP better and sooner.

In the decision in the GTA pipeline case (EB-2012-0451), the OEB directed Enbridge "to provide a more rigorous examination of demand side alternatives, including rate options, in all gas leave to construct applications."⁶ The decision also directed Enbridge to incorporate IRP in its planning in a more systematic way:

Environmental Defence urged the Board to send a signal to the companies that new supply-side investments will not be approved unless all lower cost DSM and/or interruptible service options have been explored and documented. Other parties agreed and argued that both Enbridge and Union should be required to do a better job...

In light of the evidence presented, the Board concludes that **further examination of integrated resource planning for gas utilities is warranted**. The evidence in this proceeding demonstrates that the following issues should be examined:

- The potential for targeted DSM and alternative rate designs to reduce peak demand
- The role of interruptible loads in system planning
- Risk assessment in system planning, including project prioritization and option comparison
- Shareholder incentives.⁷

In the 2014 DSM Framework decision, the Board again directed Enbridge to conduct IRP and develop a consistent IRP methodology:

As part of all applications for leave to construct future infrastructure projects, the gas utilities must provide evidence of how DSM has been considered as an alternative at the preliminary stage of project development.

In order for the gas utilities to fully assess future distribution and transmission system needs, and to appropriately serve their customers in the most reliable and cost-effective manner, the Board is of the view that DSM should be considered

⁴ E.g. EBO 169-III, *Report of the Board on the Demand-Side Management Aspects of Gas Integrated Resource Planning*, July 23, 1993, pp. 1-4; Ontario Energy Board, *Decision in EB-2012-0451/0433, January 30, 2014*, p. 46-47 (GTA Pipeline) ([link](#)); Ontario Energy Board, *DSM Framework*, December 22, 2014, p. 35-36 ([link](#)); EB-2018-0097, *Decision and Order*, January 3, 2019, pp. 6-7 (Bathurst Reinforcement) ([link](#)); EB-2020-0192 (London Lines), *OEB Decision and Order*, January 28, 2021, p. 20 ([link](#)).

⁵ EBO 169-III, *Report of the Board on the Demand-Side Management Aspects of Gas Integrated Resource Planning*, July 23, 1993 ([link](#)).

⁶ Ontario Energy Board, *Decision in EB-2012-0451/0433, January 30, 2014*, p. 46-47 (GTA Pipeline) ([link](#)).

⁷ *Ibid.*

when developing both regional and local infrastructure plans. ...The Board expects the gas utilities to consider the role of DSM in reducing and/or deferring future infrastructure investments far enough in advance of the infrastructure replacement or upgrade so that DSM can reasonably be considered as a possible alternative. If a gas utility identifies DSM as a practical alternative to a future infrastructure investment project, it may apply to the Board for incremental funds to administer a specific DSM program in that area where a system constraint has been identified.

The Board is also of the view that the gas utilities should each conduct a study, completed as soon as possible and no later than in time to inform the mid-term review of the DSM framework. The studies should be based on a consistent methodology to determine the appropriate role that DSM may serve in future system planning efforts. As part of the multi-year DSM plan applications, **the gas utilities should include a preliminary scope of the study it plans to conduct and propose a preliminary transition plan that outlines how the gas utility plans to begin to include DSM as part of its future infrastructure planning efforts.**⁸

In the 2016 DSM Plan decision, the OEB found that Enbridge's proposed next steps would cause "delay" and directed them to develop an IRP transition plan:

The OEB agrees that a case study, as proposed by Enbridge, would assist in assessing the merits of a transition plan. However, the OEB is concerned that the time required to complete a case study would delay the utilities' infrastructure planning activities proposal and the transition plan would not be available in time for the mid-term review.

The OEB directs Enbridge and Union to work jointly on the preparation of a proposed transition plan that outlines how to include DSM as part of future infrastructure planning activities. The utilities are to follow the outline prepared by Enbridge, and should consider the enhancements suggested by the intervenors and expert witnesses. The transition plan should be filed as part of the mid-term review.⁹

In the 2018 DSM Mid-Term Review decision, the OEB expressed concerns about the lack of progress on IRP and directed Enbridge to do better.

Stakeholders indicated reservations in the usefulness of the transition plan provided by the natural gas utilities. The OEB agrees that although the progress made is at an early stage, **the transition plan does not advance the understanding of the role and impact that energy conservation can play in deferring or avoiding capital projects.** Currently, **leave to construct applications do not include a description of the DSM alternatives considered to help avoid and/or defer the proposed capital project.** The natural gas utilities should continue to develop rigorous protocols to include DSM as part of their internal capital planning process. This should include a comprehensive

⁸ Ontario Energy Board, *DSM Framework*, December 22, 2014, p. 35-36 ([link](#)).

⁹ EB-2015-0029/0049, *Decision and Order*, January 20, 2016 (2015-2020 DSM Plans), p. 84 ([link](#)).

evaluation of conservation and energy efficiency considered as an alternative to reduce or defer infrastructure investments as part of all leave to construct applications.¹⁰

In the 2019 Bathurst Reinforcement decision, the OEB again directed Enbridge “to provide sufficient and timely evidence of how DSM has been considered as an alternative at the preliminary stage of project development.”¹¹ It also warned **Enbridge** that it “**faces the risk that future application will be deemed incomplete.**”¹²

In the 2021 London Lines decision, the OEB directed Enbridge to do better once again and to conduct an “in-depth quantitative and qualitative analyses of alternatives”.¹³ In particular, the OEB said:

However, despite the OEB approval of the application for leave to construct this Project, the **OEB agrees with Environmental Defence that Enbridge Gas has an obligation to conduct a more rigorous Integrated Resource Planning assessment at the preliminary stage of projects development in future cases.** As OEB staff also notes the failure to present detailed analyses makes it unlikely that Enbridge Gas would select an alternative including DSM or other non-build project option. The OEB acknowledges that more direction is likely to be provided to Enbridge Gas in future leave to construct projects as part of the ongoing IRP proceeding. In the interim, however, the OEB believes that all parties would be assisted if Enbridge Gas would, in the future, undertake in-depth quantitative and qualitative analyses of alternatives that specifically include the impacts of DSM programs on the need for, or project design of facilities for which Enbridge Gas has applied for leave to construct.¹⁴

¹⁰ EB-2017-0127/0128, *Report of the Ontario Energy Board, Mid-Term Review of the Demand Side Management (DSM) Framework for Natural Gas Distributors (2015-2020)*, November 29, 2018, p. 20-21 ([link](#)).

¹¹ EB-2018-0097, Decision and Order, January 3, 2019, pp. 6-7 ([link](#)).

¹² *Ibid.*

¹³ EB-2020-0192 (London Lines), OEB Decision and Order, January 28, 2021, p. 20 ([link](#)).

¹⁴ EB-2020-0192 (London Lines), OEB Decision and Order, January 28, 2021, p. 20 ([link](#)).