

Elson Advocacy

May 5, 2025

BY RESS

Nancy Marconi¹

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 in response to the cost claim objection of Enbridge dated April 28, 2025. Enbridge's request for a reduction in the costs awarded to Environmental Defence is unfounded. Although Environmental Defence did not ultimately win the day, the Review Panel rejected Enbridge's request to summarily dismiss the motion without a hearing and instead found that it raised "legitimate questions." The requested costs are very modest in comparison to the work involved in this matter, the complexity of the issues, and all relevant benchmarks.

Complexity and required work

Environmental Defence seeks \$11,446 in fees, plus tax.¹ That is a very low cost in comparison to the complexity of the proceeding and the legal work required. This was a legally complex matter that necessitated legal research regarding the law of procedural fairness and detailed submissions. Environmental Defence submitted 30 pages of single-spaced submissions, including its initial and reply submissions.² Our submissions were detailed, with 91 citations to the evidence and case law. The length of the Review Panel's decision also speaks to the complexity of the case. The Review Panel prepared 40 pages of reasons, showing that it was not a simple matter. The request for approximately \$12,000 in fees is a low price to pay for the work involved in preparing lengthy and detailed submissions in a complex proceeding such as this.

¹ The total cost claim, including tax, is \$12,933.98.

² Environmental Defence's initial submissions were 20 pages and its reply was 10 pages. It was also required to prepare two pages of submissions early in the review proceeding to rebut Enbridge's request that for summary dismissal.

Enbridge's own submissions on the merits of the review, which were 40 pages long, also show the complexity of the motion. Enbridge does not indicate the legal costs that it incurred for the review, but the Review Panel can reasonably estimate that they would be considerably higher than the costs sought by Environmental Defence in this matter.

Importance of the issues

The requested costs should also be viewed as low, relative to the amount of capital spending at issue in this proceeding. Enbridge sought approval of over \$165 million in capital spending as part of the underlying leave-to-construct proceeding.³ By comparison, the Dawn to Corunna leave to construct proceeding resulted in costs of over \$160,000.⁴ The costs in the Panhandle proceeding totalled over \$450,000.⁵ Neither of these are perfect comparisons, but they appropriately give a sense of the kinds of costs that arise in leave-to-construct proceedings.

Although Enbridge argues that a reduction in costs is warranted because the projects are part of a government program, there is nothing in the program that calls for a less rigorous OEB review process. On the contrary, the program explicitly maintained the requirement for a leave-to-construct proceeding. An order for leave to construct is required under s. 90 of the *OEB Act* and s. 2(1)(b) of the NGEP regulation (O. Reg. 24/19).⁶ In any event, the overall costs *are* far less than in a typical leave to construct proceeding.

Both the total costs awarded in these four proceedings and Environmental Defence's requested \$12,000 in costs for the review, are extremely reasonable in comparison to the hundreds of thousands of dollars in costs that have been granted in other leave-to-construct proceedings.

Comparison to EB-2023-0313

Enbridge argues that Environmental Defence's costs should be reduced because of similarities with EB-2023-0313, which should have resulted in efficiencies and because of what Enbridge describes as Environmental Defence bringing "repeat motions case after case." However, there are important differences between the two review proceedings. For example, unlike EB-2023-0313, the current review proceeding involved a request to submit proposed survey evidence, a different set of underlying leave-to-construct applications, and 23 times higher capital costs. If the proceedings were as similar as Enbridge suggests, the Review Panel in this proceeding would not have needed to prepare 40 pages of reasons.

³ EB-2022-0111, Exhibit I.ED.18 ([link](#), p. 344); EB-2023-0200, Exhibit I.ED-16 ([link](#), p. 302); EB-2023-0201, Exhibit I.ED-16 ([link](#), p. 399); EB-2023-0261, Exhibit I.ED-16 ([link](#), p. 258).

⁴ EB-2022-0086, Decision and Order on Cost Awards, January 13, 2023. The proposed capital costs in the Dawn to Corunna proceeding were approximately 50% higher than in this proceeding (~\$250 million).

⁵ EB-2022-0157, Decision and Order on Cost Awards, July 15, 2024 ([link](#)); Decision and Order on Interim Cost Awards, March 29, 2023 ([link](#)).

⁶ *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, sched. B, [s. 90](#); O. Reg. 24/19, [s. 2\(1\)\(b\)](#).

Environmental Defence undertook more legal research and prepared longer submissions in the current review compared to EB-2023-0313. This was justified, in part by the high capital costs at issue (as noted above, 23 times higher). Environmental Defence's initial submissions in this review were approximately twice as long as those in EB-2023-0313. Also, if legal research is removed from the dockets of this review proceeding, the total costs roughly equal those in EB-2023-0313.

Comparison to proceedings

Enbridge argues that Environmental Defence's costs are too high in comparison to the underlying four leave-to-construct proceedings. However, Enbridge's comparison is restricted to one of the four proceedings (\$7,935 in Bobcaygeon), while ignoring the other three. The fact that Environmental Defence was efficient in the underlying proceedings and incurred very low costs should not be used as an argument against the very modest costs it seeks in this review.

Stay costs

Enbridge argues that Environmental Defence's request for a stay was unnecessary and without merit. However, Environmental Defence only incurred three hours of costs in relation to the requested stay. Although the OEB ultimately declined to issue a stay, that is not justification for declining to award costs. As the OEB held in EB-2023-0313:

The OEB benefits from hearing a variety of perspectives, which may not be possible “if parties are penalized for pursuing perspectives that do not ultimately win the day.”⁷

A comparison to Enbridge's summary dismissal request is relevant. Early on in this proceeding, Enbridge asked that the review motion be summarily dismissed without a hearing.⁸ This necessitated responding submissions from Environmental Defence. Although the OEB declined to summarily dismiss the motion without a hearing, Enbridge shareholders should not be required to bear those costs by prohibiting them from being included in ratepayer-funded O&M budgets. Similar reasoning applies to the modest three hours expended by Environmental Defence in its stay request.

Environmental interests

Enbridge argues for costs to be reduced because Environmental Defence is an “environmental advocacy organization.” That is not an appropriate justification to reduce an intervenor's properly incurred costs. Furthermore, Environmental Defence represents more than the public interest in environmental protection. It represents ratepayers that want both clean and affordable energy. In this specific proceeding, that includes gas customers who do not want to further subsidize the expansion of fossil fuel pipelines

⁷ EB-2023-0313, Decision and Order on Cost Awards, March 5, 2024, p. 3 (Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249) ([link](#)).

⁸ Letter of Enbridge Gas, June 18, 2024 ([link](#)).

beyond the amounts mandated in Natural Gas Expansion Program. This is a valid and important ratepayer interest.

The OEB should take care when considering whether to disallow costs, as doing so can increase the asymmetry of resources between applicants and intervenors. Enbridge's lawyers and experts are guaranteed payment at any agreed-on rate no matter what the outcome of a proceeding and Enbridge is always able to recoup those costs from ratepayers. That is not the case for intervenors, who are subject to disallowances and the OEB's tariff.

This is particularly the case for environmental non-profits such as Environmental Defence, which have absolutely no resources to cover costs that are not reimbursed by the OEB via a cost award, pay costs on an interim basis while cost awards are pending, or top-up the OEB tariff. Accepting Enbridge's arguments on costs in this proceeding will only serve to increase the resource imbalance between parties and decrease the robustness of OEB proceedings, while making no material impact on ratepayer costs.

Broader concerns

Enbridge cites the Minister's support of the OEB's 10-point intervenor action plan. Contrary to Enbridge's assertions, these considerations support awarding costs. The OEB's Report to the Minister highlighted that external participation in OEB adjudicative proceedings "is an important part of how the OEB hears applications and makes its decisions."⁹ It also noted that covering intervenor costs "ensures that the OEB hears a variety of perspectives."¹⁰ These considerations apply equally here.

The OEB's Report and the Minister's letter both discuss the need to manage overall intervenor costs. The approximately \$12,000 in costs sought by Environmental Defence are not material to the \$4.4 million in intervenor costs incurred annually or the \$13 billion in utility revenues that the OEB regulates.¹¹ Enbridge's detailed five-page objection is overblown given the amount at issue and is not an efficient use of the OEB's time to adjudicate. Indeed, it has already had an impact by requiring us to prepare a detailed response, which is not currently a costs-eligible activity.

Conclusion

Environmental Defence prides itself on acting responsibly and efficiently in OEB proceedings. It is common for Environmental Defence to request much lower costs than other parties that have participated and contributed less in a proceeding, including proceedings where Environmental Defence is seeking the lowest costs among intervenors.¹² As in past cases, the requested costs in this review proceeding are very

⁹ OEB, *Report Back to the Minister: Intervenors and Regulatory Efficiency*, September 27, 2024, p. 2 ([link](#)).

¹⁰ *Ibid.* p. 3.

¹¹ *Ibid.* p. 3.

¹² E.g. EB-2022-0335 (See Enbridge letter of April 24, 2025, listing the cost claim amounts) ([link](#)).

modest in comparison to the work required, the complexity of the issues, and all relevant benchmarks. We therefore request that they be awarded in full.

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