

Elson Advocacy

November 5, 2025

Ritchie Murray
Acting Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4
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Dear Mr. Murray,

**Re: Certificate of Public Convenience and Necessity – Tay Valley Township
EB-2024-0342**

We write on behalf of Climate Network Lanark (“CNL”) to provide a response to the cost claim objection submitted by Enbridge Gas Inc. (“Enbridge”) on October 30, 2025. Contrary to Enbridge’s assertions, Climate Network Lanark contributed responsibly to this proceeding, raised relevant issues for the OEB’s determination under the *Municipal Franchises Act*, and provided a unique perspective in a way that is consistent with the OEB’s adjudicative processes.

The OEB’s *Practice Direction on Cost Awards* (the “*Practice Direction*”) provides a list of items that the OEB may consider, among other factors, in determining the amount of a cost award to a party.¹ Those factors are addressed below.

Responsible participation

The *Practice Direction* asks whether the party participated responsibly in the process. Enbridge states that CNL’s “entire participation in this proceeding was an exploration of issues that were not material to the proceeding at all.” In particular, Enbridge argues that CNL’s evidence and interrogatories were irrelevant and outside the scope of the proceeding.

The OEB previously rejected these arguments from Enbridge in Procedural Orders Nos. 3 and 4. In its request for leave to file evidence, CNL clearly identified the content and purpose of the proposed affidavit evidence of Sue Brandum.

The Climate Network Lanark intends to file evidence to support its contention that expanding the geographic area in which Enbridge Gas has permission to construct gas works is not a necessity and is not in the public interest. For example, the evidence would

¹ OEB, *Practice Direction on Cost Awards*, April 1, 2023.

include the climate action plans for Tay Valley Township and Lanark County, facts relating to the consistency of the relief requested in the application with the relevant policy documents, facts relating to the consistency of the relief requested in the application and the interests of local residents, and exhibits in support of those facts.²

The exhibits that were attached to Ms. Brandum’s affidavit were directly relevant to her evidence regarding CNL’s objection to an expanded Certificate of Public Convenience and Necessity (“Certificate”) on policy and personal grounds. Despite Enbridge’s objections as to the relevance of the proposed evidence, the Board approved CNL’s evidence request.³

Similarly, the Board found that the issues raised by CNL through interrogatories were relevant to the proceeding when it ordered Enbridge to provide further and better responses to interrogatories:

The additional information requested by CNL may, with one exception described below, be of assistance to the OEB’s understanding of the positions of the parties in this proceeding.⁴

From the start, CNL was clear about the purpose of its participation in the proceeding: to voice the objections of local residents to Enbridge Gas’s application for an expanded Certificate in Tay Valley Township. These objections were directly relevant to the Board’s consideration of whether Enbridge’s application was in the public interest. CNL stayed true to its stated goal throughout the proceeding and did so in a responsible manner. CNL also demonstrated flexibility in its procedural requests to the Board.⁵

Enbridge Gas, on the other hand, stood in the way of an efficient and cost-effective proceeding by continuously raising objections that required adjudication at every step of the way.

Contribution to the Proceeding

The *Practice Direction* asks whether the party contributed to a better understanding by the Board of one or more issues. In this case, Climate Network Lanark provided indispensable evidence for the Board’s determination of the public interest under s. 8 of the *Municipal Franchises Act*.

The Board was required to determine whether the application was in the public interest.⁶ This requires a balancing of the benefits and burdens of the relief sought.⁷ In the context of an application under the *Municipal Franchises Act*, this includes both local and provincial interests.⁸

² EB-2024-0342, Climate Network Lanark, Letter to the OEB, June 10, 2025 p. 1.

³ EB-2024-0342 Procedural Order No. 3, June 18 2025.

⁴ EB-2024-0342 Procedural Order No. 4. August 20 2025.

⁵ Letter from Climate Network Lanark to the OEB dated August 6, 2025.

⁶ *Sunshine Transit Service v. The Taxicab Board*, 2014 MBCA 33 at para 39.

⁷ *Sumas Energy 2, Inc. v. Canada (National Energy Board)*, 2005 FCA 377 at para 33.

⁸ *Centra and City of Kingston (Re)*, E.B.A. 825 (June 22, 2000) at para. 4.0.4.

CNL brought forward important perspectives from municipal electors who are concerned about the implications of an expanded approval to construct gas works for Enbridge in their Township.

CNL also raised important questions about the meaning of ‘necessity’ in the context of an application under s. 8 of the *Municipal Franchises Act*. Different OEB panels have diverged in their interpretation of this requirement, and as such, it remains a live issue for adjudication.⁹ Although the CNL was not successful on the argument, its raised important and valid arguments. As a Review Panel previous stated 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.”¹⁰

Costs prior to approval of intervenor status

Enbridge objects to awarding any costs arising from work completed prior to CNL’s approval as an intervenor. This does not align with OEB practice and would be substantively unfair.

The vast majority of costs associated with the period prior to receiving Board approval arose directly from Enbridge’s objection to CNL’s intervention request. Had Enbridge accepted this local resident group’s participation up front, the costs incurred during this period would be minimal and related to reviewing and researching the application. These expenses are allowable under the Board’s practice, which is evidenced by the fact that the OEB’s cost claims form via RESS specifically includes a line for “Review and Research Application and Evidence.”¹¹

This reflects the OEB’s typical practice of reimbursing fees arising after the application filing date. It is consistent with our experience and was also explicitly discussed by Board Staff in the pre-hearing consultations for Enbridge’s rebasing case. It also makes sense. Intervenors need to review the application prior to being granted intervenor status in order to, among other things, identify the topics that they seek to address. Also, additional up-front review can bring about efficiencies down the road, such as decreasing the time required to prepare interrogatories.

In this case, the costs prior to approval of intervenor status are higher than usual only because Enbridge strenuously objected to the intervention, requiring a response. Those objections were rejected by the OEB. The fact that Enbridge made unfounded objections to this intervenor is clearly not a reason to disallow costs.

Other *Practice Direction* factors

⁹ See for example: EB-2017-0108, [Decision and Order](#), November 4, 2019, p. 4 and [EB-2023-0146](#), August 31, 2023, p. 5.

¹⁰ 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).

¹¹ EB-2024-0342, Climate Network Lanark, Cost Claim, October 21, 2025, p. 4.

Other factors cited in the *Practice Direction* also support awarding costs:

- The *Practice Direction* asks whether the party complied with Board orders and rules. CNL did so and Enbridge does not allege any breaches of Board orders or rules.
- The *Practice Direction* asks whether the party made efforts to co-operate. CNL actively cooperated with the municipality in order to reduce redundancies.
- The *Practice Direction* asks whether participation was unduly repetitive. CNL was the only citizen group represented in the proceeding.
- The *Practice Direction* asks whether participation was focused on material issues. As described above, CNL's intervention focused on the key issue for determination by the Board: whether the application met the test for public convenience and necessity.
- The *Practice Direction* asks whether a party has unnecessarily lengthened the process or acted inappropriately or irresponsibly. CNL acted appropriately and efficiently in its participation.

Broader concerns

Enbridge opens its letter by citing 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 how external participation in OEB adjudicative proceedings "is an important part of how the OEB hears applications and makes its decisions."¹² It also notes that covering intervenor costs "ensures that the OEB hears a variety of perspectives."¹³ These considerations apply equally here.

The OEB's report and the Minister's letter both discuss the need to manage overall intervenor costs. The costs sought by Climate Network Lanark are not material to the \$4.4 million in intervenor costs incurred annually or the \$13 billion in utility revenues that the OEB regulates.¹⁴ Enbridge's detailed five-page objection is far overblown for the amounts at issue and is not an efficient use of the OEB's time to adjudicate.

Intervenors play an important role by providing perspectives that are different from those of applicants such as Enbridge. If intervenor costs are unduly disallowed, that important role will be hindered. This will add to the existing imbalance in resources between applicants and intervenors. Enbridge's staff and counsel have 100% confidence that they will be paid and can charge market rates. The same is not true for intervenor counsel. Caution is needed when considering intervenor costs as it is not in the public interest to increase the imbalance in resources between applicants and those representing other perspectives.

Enbridge further identifies "The frequency of some representatives appearing for multiple intervening organizations" as "an opportunity for the OEB to assess value of those representations over time..." This concern is a red herring and should be rejected.

¹² [OEB, Report Back to the Minister Intervenors and Regulatory Efficiency, September 27, 2024](#), p. 2.

¹³ *Ibid.* p. 3.

¹⁴ *Ibid.* p. 3.

OEB proceedings are complex and inaccessible to many local interest groups. The availability of seasoned counsel and consultants with expertise in OEB processes and procedures ensures that these parties are able to meaningfully participate and contribute to a healthy regulatory environment. It also creates regulatory efficiencies because counsel who are well versed in the OEB's legislative context and practices can act in a more efficient and cost-effective manner.

The fact that Enbridge was required to post a Notice of Hearing (attached as Appendix A) shows that the opportunity for public participation is important. The intervention of Climate Network Lanark fulfilled that purpose, consistent with the *Municipal Franchises Act*.

Overall quantum

Enbridge has not objected to the specific quantum of costs sought. Nor has it argued that the amount is out of line with amount of work at issue. We agree. The quantum of costs is very low in light of the work involved in advising a client that is not familiar with OEB proceedings, researching issues that are not commonly raised at the OEB, proposing evidence, preparing interrogatories, and responding to various objections by Enbridge.

Conclusion

Although Climate Network Lanark was not ultimately successful in the proceeding, it participated responsibly and raised relevant arguments under the *Municipal Franchises Act* in accordance with the overall objectives of the OEB's intervenor system. As a result, there is no basis on which to disallow the costs sought.

Yours truly,



Kent Elson

cc: Parties in the Above Proceeding