



Ontario
Energy
Board

Commission
de l'énergie
de l'Ontario

DECISION AND ORDER ON COST AWARDS

EB-2017-0224/EB-2017-0255/EB-2017-0275

ENBRIDGE GAS DISTRIBUTION INC.

UNION GAS LIMITED

EPCOR NATURAL GAS LIMITED PARTNERSHIP

**Application for approval of the cost consequences of 2018 cap
and trade compliance plans**

BEFORE: Ken Quesnelle
Presiding Member

Michael Janigan
Member

Susan Frank
Member

March 18, 2019

INTRODUCTION AND SUMMARY

This is a decision of the Ontario Energy Board (OEB) on cost claims filed with respect to an Enbridge Gas Distribution Inc. (Enbridge Gas), Union Gas Limited (Union Gas) and EPCOR Natural Gas Limited Partnership (EPCOR Natural Gas) proceeding.

Enbridge Gas, Union Gas and EPCOR Natural Gas (collectively the Gas Utilities) each filed an application with the OEB seeking approval of the forecast costs arising from their cap and trade Compliance Plans for the January 1 - December 31, 2018 time period.

The OEB granted the Association of Power Producers of Ontario (APPoO); Building Owners and Managers Association, Greater Toronto (BOMA); Consumer Council of Canada (CCC); Canadian Manufacturers & Exporters (CME); Energy Probe Research Foundation (Energy Probe); Environmental Defence; Federation of Rental-Housing Providers of Ontario (FRPO); Green Energy Coalition (GEC), Industrial Gas Users Association (IGUA); Low-income Energy Network (LIEN); London Property Management Association (LPMA); Ontario Association of Physical Plant Administrators (OAPPA); Ontario Sustainable Energy Association (OSEA), School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC) (collectively, Cost Eligible Parties) intervenor status and cost award eligibility.

On December 10, 2018, the OEB issued its Procedural Order No.7 in which it set out the process for intervenors to file their cost claims, for the Gas Utilities to object to the claims and for intervenors to respond to any objections raised by the Gas Utilities.

The OEB received cost claims from APPoO, BOMA, CCC, CME, Energy Probe, Environmental Defence, FRPO, GEC, IGUA, LIEN, LPMA, OSEA, SEC and VECC. By e-mail, OAPPA stated that they will not file a cost claim.

On January 17, 2019, Enbridge Gas filed a response to the cost claims and noted that it had reviewed the cost claims in aggregate and noted concerns with the claims of BOMA and GEC.

Enbridge Gas noted the following concerns with the claims of BOMA and GEC. Enbridge Gas noted that BOMA's claim includes (i) preparatory time for the technical conference in excess of five times the approximate average of the other cost claims and more than two and a half times the next highest claim and (ii) preparatory time for

Argument of more than double the approximate average of other cost claims and nearly double the next highest cost claim.

Enbridge Gas noted that GEC's claim were inappropriate as they largely relate to matter deemed out-of-scope for the 2018 Cap-and-Trade Compliance Plan proceeding. Enbridge Gas noted that Mr. Neme's evidence and testimony relied primarily upon the Conservation Potential Study developed specifically for the 2015-2020 DSM Framework which utilizes the total resource cost test. Enbridge Gas noted that GEC pursued those topics despite prior direction from the OEB to be mindful of the appropriateness of Mr. Neme's evidence. Enbridge Gas further noted that GEC included preparatory time for the oral hearing of nearly 150 hours equating to over five times the approximate average of the other cost claims and more than four and a half times the next highest cost claim. Finally, Enbridge Gas stated that GEC had included disbursements for the cost of meal which was inconsistent with the OEB's *New Guidance on Practice Direction on Cost Awards*.

In response to Enbridge Gas' objection, BOMA noted that it claimed hours for the review and analysis of the applicant's evidence and related documentation in the "preparation for technical conference" line of the OEB's cost claim form. BOMA noted that its Argument, which was thirty pages, was larger, more detailed, broader and deeper in scope than most of the other arguments, some of which were only five or six pages, and many of them from parties that were more or less opposed to gas utilities engaging in ratepayer-funded conservation programming.

In response to Enbridge Gas' objection, GEC argued that Mr. Neme limited his observations to "a quantification of the incremental abatement that pre-existing reports and data suggest is available" and respected the outline of their proposed evidence that the OEB found relevant. GEC stated that Mr. Neme noted in his evidence that he performed a high-level assessment of the cost-effectiveness of incremental efficiency in a manner that was within the scope of the proceeding. Furthermore, GEC responded that they played a leading role in the proceedings.

OEB Findings

The OEB has reviewed the claims filed to ensure that they are compliant with the OEB's *Practice Direction on Cost Awards*.

While a decision was not reached by the OEB, the Cap & Trade proceeding was lengthy with significant contributions from intervenors throughout the proceeding ending with submissions. The cost claims from the intervenors totaled over \$500,000. With the exception of the claims of the intervenors discussed below, the cost claims are accepted and approved.

In assessing and deciding on cost claims, the OEB notes the purpose of its cost award policy first set out in the foundational decision of EBO 116:

“The Board believes it should have available to it a broad range of opinions and information for its decision making. Hearings before the Board are becoming increasingly complex. In such circumstances, the Board considers that in fulfilling its duty towards the public interest, which is implicit in the OEB Act, there is increasing need to ensure that a broad range of interests is represented at the Board’s hearings and that the essential points are canvassed in sufficient depth to have developed a record that will provide maximum assistance to the Board.”

Cost awards are intended to enable assistance to the OEB by a broad range of interests in proceedings, and to compensate for the costs to provide this assistance. It is thus the **value** to the OEB of such participation that provides the overarching objective in the consideration and determination of cost awards.

In order to fairly assess and compensate for intervenor participation, particularly in lengthy proceedings with multiple intervenors, the OEB will have reference to a comparison of the time spent by each intervenor participant. This does not mean that the amount of a cost award is mechanically determined by an average of the time spent or amounts claimed by all intervenors. The work done, the complexity of the issues addressed, and, most importantly, the assistance to the panel afforded by the participation, are the relevant criteria that provide the basis for any award. Where cost claims appear to be outliers these criteria provide the basis for the justification or reduction of a cost claim.

BOMA

BOMA’s cost claim is considerably greater in time spent and total dollar amount claimed than other non-evidence offering intervenors. There are some category totals that are particularly high in comparison to all others. The technical conference preparation claimed was 56.2 hours, when most intervenors spent under 10 hours. In preparing argument, BOMA spent 56.7 hours compared to 25 hours or less for most intervenors. In considering the additional time and the total number of hours claimed, the OEB does

not find that BOMA's contribution to the hearing and assistance to the panel to be commensurate with a claim that is significantly higher than non-evidence offering intervenors. The OEB will reduce the number of compensable hours by BOMA by 97.7 hours to 120. In total, the BOMA cost claim will be reduced by \$36,432.33 including HST to \$44,873.67.

GEC

GEC's claim was significantly higher than other participant intervenors. This was largely the result of GEC's sponsorship of the expert evidence of Chris Neme. Mr. Neme's participation and budget was approved in Procedural Order No. 3. That budget contemplated 82 hours of Mr. Neme's time at a cost of \$27,060. The expert evidence claimed is 5.75 hours more than the budgeted amount. Chris Neme's total invoice was for 139 hours and included his support to the hearing as well as his expert evidence.

David Poch's invoice was for 156.7 hours with hearing preparation of 68 hours. Given Mr. Neme's assistance, the OEB considers the total number of hours claimed to be somewhat duplicative. A reduction to the GEC costs of 34 hours related to David Poch's hearing preparation, and 5.75 hours in excess of the budgeted amount for Chris Neme, is approved. In total, the GEC cost claim will be reduced by \$14,822.78 including HST to \$92,618.00. The claim of GEC also requires a reduction of \$398.31 due to \$41.60 for HST charges for mileage for David Poch, \$12.04 for incorrect mileage rate for Chris Neme, \$10.64 for gratuities on taxi fare for Chris Neme and \$334.03 for meal disbursements which is not in accordance with the *New Guidance on Practice Direction on Cost Awards*.

OSEA

At 136.2 hours, the cost claim by OSEA was high considering the contributions that it made to the proceeding. However, most of the OSEA counsel are junior and may have required additional time with the regulatory processes in this lengthy proceeding. The OEB will not reduce their cost claims for this proceeding. However, the OEB notes that there is a normal expectation that OSEA's counsel will be able to reduce their hours for comparable tasks with more experienced counsel.

APPrO

The claim of APPrO requires a reduction of \$56.37 due to HST charges for mileage, train and cab claim.

The OEB finds that the claims of CME, CCC, Energy Probe, Environmental Defence, FRPO, IGUA, LPMA, LIEN, OSEA, SEC and VECC and the adjusted claims of APPrO, BOMA and GEC are reasonable and each of these claims shall be reimbursed by Enbridge Gas Distribution Inc., Union Gas Limited and EPCOR Natural Gas Limited Partnership.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Enbridge Gas Distribution Inc., Union Gas Limited and EPCOR Natural Gas Limited Partnership shall immediately pay the following amounts to the intervenors for their costs:

• Association of Power Producers of Ontario	\$39,117.21
• Building Owners and Managers Association, Greater Toronto	\$44,873.67
• Canadian Manufacturers & Exporters	\$19,333.77
• Consumer Council of Canada	\$28,340.40
• Energy Probe Research Foundation	\$21,699.38
• Environmental Defence	\$27,328.34
• Federation of Rental-Housing Providers of Ontario	\$35,323.16
• Green Energy Coalition	\$92,618.00
• Industrial Gas Users Association	\$31,997.78
• London Property Management Association	\$20,136.60
• Low-income Energy Network	\$10,530.20
• Ontario Sustainable Energy Association	\$28,353.38
• School Energy Coalition	\$29,227.45
• Vulnerable Energy Consumers Coalition	\$20,717.84

2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Enbridge Gas Distribution Inc., Union Gas Limited and EPCOR Natural Gas Limited Partnership shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

DATED at Toronto March 18, 2019

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary