



**EB-2012-0451
EB-2012-0433
EB-2013-0074**

IN THE MATTER OF an application by Enbridge Gas Distribution Inc. for: an order or orders granting leave to construct a natural gas pipeline and ancillary facilities in the Town of Milton, City of Markham, Town of Richmond Hill, City of Brampton, City of Toronto, City of Vaughan and the Region of Halton, the Region of Peel and the Region of York; and an order or orders approving the methodology to establish a rate for transportation services for TransCanada Pipelines Limited;

AND IN THE MATTER OF an application by Union Gas Limited for: an order or orders for pre-approval of recovery of the cost consequences of all facilities associated with the development of the proposed Parkway West site; an order or orders granting leave to construct natural gas pipelines and ancillary facilities in the Town of Milton; an order or orders for pre-approval of recovery of the cost consequences of all facilities associated with the development of the proposed Brantford-Kirkwall/Parkway D Compressor Station project; an order or orders for pre-approval of the cost consequences of two long term short haul transportation contracts; and an order or orders granting leave to construct natural gas pipelines and ancillary facilities in the City of Cambridge and City of Hamilton.

BEFORE: Cynthia Chaplin
Presiding Member

Marika Hare
Member

Peter Noonan
Member

**DECISION AND ORDER ON COST AWARDS
March 31, 2014**

Background

Union Gas Limited (“Union”) and Enbridge Gas Distribution Inc. (“Enbridge”) filed three applications with the Ontario Energy Board requesting approval to construct major system expansion projects. The applications were filed separately, but the Board combined the proceedings and heard them together (“Combined Proceeding”).

The Board granted intervenor status to a number of organizations and individuals, and authorized cost award eligibility to the following parties:

- Association of Power Producers of Ontario (“APPrO”)
- Building Owners and Managers Association - Toronto (“BOMA”)
- Consumers Council of Canada (“CCC”)
- Council of Canadians (“COC”)
- Canadian Manufacturers and Exporters (“CME”)
- Energy Probe Research Foundation (“Energy Probe”)
- Environmental Defence (“ED”)
- Federation of Rental-housing Providers of Ontario (“FRPO”)
- Green Energy Coalition (“GEC”)
- Industrial Gas Users Association (“IGUA”)
- London Property Management Association (“LPMA”)
- Markham Gateway Inc. (“Markham Gateway”)
- Mississaugas of the New Credit First Nation (“MNCFN”)
- School Energy Coalition (“SEC”)
- Six Nations Elected Council (“Six Nations”)
- Vulnerable Energy Consumers Coalition (“VECC”)

The Board previously determined that intervenors would track their costs for the related issues separately from the costs for the project-specific issues and that the applicants would share the costs for the related issues equally, and bear the project-specific costs individually.

On January 30, 2014, the Board issued its Decision and Order, in which it set out the process for intervenors to file their cost claims, for Union and Enbridge to object to the claims and for intervenors to respond to any objections raised by Union and Enbridge.

The following eligible participants submitted cost claims: APPrO, BOMA, CME, COC, CCC, Energy Probe, ED, FRPO, GEC, IGUA, LPMA, Markham Gateway, SEC and VECC. Both Union and Enbridge responded to the claims. Enbridge noted that there was a wide variation in the hours claimed for the Enbridge portion of the Combined Proceeding. Enbridge requested that the Board take a “normalizing view” of the number of hours claimed in determining cost awards. Union raised concerns with respect to the number of hours claimed by BOMA and the allocation of costs between Union and Enbridge.

GEC responded that it had presented two expert witness reports, covering the demand side management aspects of the case and addressing the need for the pipeline components including, the pressure issues and electricity generation gas demand. GEC maintained that the scope of its evidence was broader than either COC or ED. GEC argued that the total hours, including witness hours, are proportionately in line with the other parties. GEC submitted that Enbridge’s suggestion of a “normalizing view” of the number of hours claimed, if taken without regard to the breadth, complexity, and intensity of interventions, would not result in a fair consideration of the intervenors’ cost claims generally, and it would not lead to a decision based on the facts.

COC responded that it sponsored evidence from three expert witnesses concerning the reliability and cost of supply of gas from U.S. shale deposits.

BOMA responded that it had incorrectly combined its hours for preparation and argument together under the heading “Preparation”. BOMA spent 119.2 hours on argument, reducing the preparation hours to 508.9, as opposed to the 628 hours quoted in Union’s letter. BOMA stated that the argument was long, substantial and integrated and addressed all the issues in the case in considerable depth. BOMA provided additional information on the breakdown of time spent on preparation, indicating the amount of time spent with respect to Enbridge, Union and the combined issues.

CME responded that “normalizing” the number of hours claimed by intervenors would be inappropriate and unfair. CME noted that different parties may have had substantially different levels of involvement, and some intervenors took a lead role on one or more issues while other intervenors did not do so. CME also noted that the level of cooperation in the Combined Proceeding was very high, and that the total hours or total costs claimed by an intervenor should not be used as a mathematical basis to “normalize” cost awards.

Board Findings

The fee claims for the following parties are approved in full: CME, CCC, Energy Probe, ED, FRPO, GEC, IGUA, LPMA, Markham Gateway, SEC and VECC. The Board finds that the proposed allocations between Union and Enbridge are consistent with the Board’s previous determination and will be accepted.

The Board has determined that the fees claimed by APPrO, BOMA and COC are excessive and will be reduced.

APPrO claimed \$190,610 in fees and BOMA claimed \$264,106. Both of these intervenors represent ratepayer interests and neither sponsored expert evidence. These two cost claims can be compared with the cost claims of other similar intervenors, namely the many ratepayer groups active in the proceeding. Cost claims for ratepayer group intervenors for fees (not disbursements) varied between a low of \$35,000 for VECC and a high of \$264,106 for BOMA. The Board finds that the claims which fall in the range of \$35,000 (VECC) to \$160,814 (CME) are reasonable on two measures: (1) the level of involvement by each party in the various processes related to the hearing; and (2) the level of contribution to the Board’s understanding of the issues to be decided. The claims by APPrO and BOMA are outside the range of what the Board considers reasonable. The level of involvement by these intervenors and their contributions to the Board’s understanding of the issues in the proceeding were not significantly superior to those of the other ratepayer intervenors. Therefore, the Board will reduce each of these claims to \$160,000 to be allocated for payment between Union and Enbridge in the same proportions as claimed. This level is at the upper end of the range which the Board considers reasonable.

COC claimed \$206,572, of which \$30,789 was claimed for the experts who provided testimony. The Board finds the claims for the experts to be reasonable. The balance of \$229,783 is claimed for legal fees, and is driven primarily by the 451 hours attributable to Mr. Shrybman. This claim can be compared to the claims by GEC and ED, which claimed 284 hours and 244 hours, respectively, for legal fees. Each of these three intervenors is a policy advocacy group and each sponsored expert testimony. In some respects, COC's scope was narrower than either GEC or ED. The Board finds that the claim for 451 hours by COC for senior counsel is excessive. The level of involvement by COC and its contribution to the Board's understanding of the issues in the proceeding was not significantly greater than GEC or ED. Therefore, the significantly higher number of hours is not justified. The Board will reduce the fees for COC to \$144,777. This level reflects a reduction in the hours claimed for senior counsel to 290 hours. This adjusted level will be allocated between Union and Enbridge in the same proportions as the original claim.

The disbursements claimed by APPrO, BOMA, CME, COC, CCC, Energy Probe, ED, FRPO, GEC, IGUA, LPMA, Markham Gateway, SEC and VECC are approved as filed with minor reductions for the following reasons: errors in HST/Summary of Fees and disbursements calculations; lack of receipts; and non-compliance with the government's *Travel, Meal and Hospitality Expenses Directive*. The Board finds that the adjusted disbursement claims of APPrO, BOMA, CME, COC, CCC, Energy Probe, ED, FRPO, GEC, IGUA, LPMA, Markham Gateway, SEC and VECC shall be reimbursed by Union and Enbridge in the same proportions as the original claim.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, Enbridge Gas Distribution Inc. and Union Gas Limited shall pay to the parties the awarded costs in the amount as listed in Appendix A;
2. Enbridge Gas Distribution Inc. and Union Gas Limited shall each pay 50% of the Board's costs and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, March 31, 2014

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Appendix A
Decision and Order on Cost Awards

Enbridge Gas Distribution Inc. EB-2012-0451
Union Gas Limited EB-2012-0433 & EB-2013-0074

March 31, 2014

Party	Enbridge pays	Union pays	Total
Association of Power Producers of Ontario	\$ 83,137.67	\$ 80,768.07	\$ 163,905.74
Building Owners and Managers Association - Toronto	\$ 80,021.54	\$ 80,021.54	\$ 160,043.08
Canadian Manufacturers and Exporters	\$ 85,379.14	\$ 85,379.13	\$ 170,758.27
Council of Canadians	\$ 76,303.13	\$ 76,303.14	\$ 152,606.27
Consumers Council of Canada	\$ 68,054.25	\$ 34,306.80	\$ 102,361.05
Energy Probe Research Foundation	\$ 56,316.62	\$ 44,638.89	\$ 100,955.51
Environmental Defence	\$ 145,712.58	\$ -	\$ 145,712.58
Federation of Rental-housing Providers of Ontario	\$ 59,904.17	\$ 51,599.54	\$ 111,503.71
Green Energy Coalition	\$ 287,183.14	\$ 32,773.41	\$ 319,956.55
Industrial Gas Users Association	\$ 49,061.74	\$ 42,442.21	\$ 91,503.95
London Property Management Association	\$ 24,660.85	\$ 35,176.64	\$ 59,837.49
Markham Gateway Inc.	\$ 79,435.12	\$ -	\$ 79,435.12
School Energy Coalition	\$ 50,437.00	\$ 40,218.00	\$ 90,655.00
Vulnerable Energy Consumers Coalition	\$ 20,094.80	\$ 16,150.29	\$ 36,245.08