

September 5, 2014

BY COURIER (2 COPIES) AND RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, Ontario M4P 1E4
BoardSec@ontarioenergyboard.ca

Dear Ms. Walli:

**Re: Environmental Defence Notice of Motion and Submissions
EB-2012-0451 – Enbridge Gas Distribution Inc. (“Enbridge”)
GTA Pipeline Leave to Construct; EB-2012-0433, EB-2013-0074
Union Gas Ltd. (“Union”) – Parkway West and Brantford-Kirkwall
Parkway D Projects**

I am writing to request that the Board review and vary its Decision and Order on Cost Awards issued on March 31, 2014 (revised on April 3, 2014) to allow Environmental Defence to submit a supplementary cost claim in the above matter. This supplementary cost claim contains a single consultant's invoice that, through a clerical error, was inadvertently omitted from Environmental Defence's cost claim of March 4, 2014. By this letter Environmental Defence wishes to provide notice of this motion and its submissions. Environmental Defence proposes that this motion be heard in writing.

The Environmental Defence cost claim was submitted on March 4, 2014. The Board issued its Decision and Order on Cost Awards on March 31, 2014 and revised its reasons on April 3, 2014. The Board approved the Environmental Defence cost claim (except for a *de minimus* amount of \$24.76). On August 26, 2014, I discovered that I had inadvertently omitted a consultant's invoice from the March 4, 2014, cost claim while assembling the documents for the claim. The attached Supplementary Cost Claim totals \$16,739.14 and relates only to that inadvertently omitted invoice.

For the following reasons, we respectfully request that the Board accept and approve this Supplementary Cost Claim:

1. **No Prejudice:** No party will be prejudiced by the late filing of this cost claim. The applicant and board staff retain the opportunity to review and make submissions on the claim. In other words, the late filing of the claim does not impact the ability of board staff or the applicant to challenge the claim.

2. **Inadvertence:** The additional invoice was omitted through an inadvertent clerical error. It was an honest mistake and oversight.
3. **Prompt Response:** The oversight was discovered on August 26, 2014 as the result of questioning from a bookkeeper. We responded by immediately contracting board staff and taking steps to remedy the situation.
4. **Precedent:** In EB-2011-0327 the Board accepted a supplementary cost claim for approximately \$20,000. The claim was submitted by the Canadian Manufacturers & Exporters (“CME”) approximately 2.5 months after the Board had issued its Decision and Order on Costs in that proceeding. In that case, CME had omitted certain invoices from a cost claim based on the belief that they should be submitted directly to the applicant as part of a related consultation process. This situation is analogous in that the Board accepted the inadvertently omitted invoices.
5. **Supplementary Claim Amount is Reasonable:** The invoice for the professional services of Mr. Jack Gibbons is reasonable. The amount includes time for activities such as reviewing the evidence, attending ADR, and preparing briefing notes for cross-examinations. According to the Practice Direction on Cost Awards, Mr. Gibbons could charge \$330 per hour. Out of respect for public dollars, Mr. Gibbons charges \$250 per hour – considerably less than the allowable amount.
6. **Overall Claim Amount is Reasonable:** The overall amount of costs claimed by Environmental Defence is reasonable. Environmental Defence played a leading and active role in this proceeding as indicated in the enclosed excerpts from the Board’s decision. Environmental Defence submitted expert evidence and extensive submissions. However, the overall amount sought by Environmental Defence is lower than the cost claims of a number of intervenors that did not submit any evidence. Furthermore, the overall amount sought by Environmental Defence is approximately half of the amount awarded to the other intervenor that submitted expert evidence regarding demand side management issues.

We have provided a draft of this letter to Board Staff. Board Staff have advised us that a motion is the correct course to take in this situation and that Board Staff will not oppose the motion.

In this proceeding the costs were divided between Enbridge and Union. However, Environmental Defence’s costs were apportioned 100% to Enbridge as its participation in the proceeding was focused on Enbridge’s GTA Pipeline Leave to Construct Application. The applicants did not object to this apportionment and the Board accepted it. We request that the supplementary cost claim also be apportioned 100% to Enbridge.

In the over 20 years that our firm has appeared before the Board we have never sought to submit a supplementary cost claim such as this. The current situation only arises now due to an honest and inadvertent oversight. For these and the reasons detailed above,

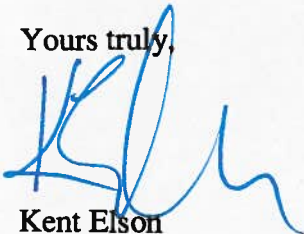
Environmental Defence respectfully requests an order the Enbridge pay its Supplementary Cost Claim of \$16,739.14.

To assist the Board in its review of this motion we have enclosed a Motion Record containing the following materials:

1. Environmental Defence's Supplementary Cost Claim dated August 27, 2014;
2. Decision and Order on Canadian Manufacturers & Exporters Motion to Review in EB-2011-0327, August 23, 2012;
3. Decision and Order in EB-2012-0451, EB-2013-0074, & EB-2012-0433, January 30, 2014 (excerpts regarding Environmental Defence's participation);
4. Decision and Order on Cost Awards, EB-2012-0451, EB-2013-0074, & EB-2012-0433, issued on March 31, 2014 and revised on April 3, 2014; and
5. Environmental Defence's Cost Claim dated March 4, 2014.

Please do not hesitate to advise us if anything further is required or would be of assistance.

Yours truly,



Kent Elson

Encl.

cc: Parties and Applicant