



# **Ontario Energy Board Commission de l'énergie de l'Ontario**

---

## **DECISION AND ORDER ON COST AWARDS**

**EB-2018-0105**

**UNION GAS LIMITED**

**Application for the disposition of amounts recorded in certain deferral and  
variance accounts and approval of the earnings sharing amount**

**BEFORE: Allison Duff**  
Presiding Member

**Lynne Anderson**  
Member

**Michael Janigan**  
Member

---

**February 4, 2019**

## INTRODUCTION AND SUMMARY

This is a decision of the Ontario Energy Board (OEB) on cost claims filed with respect to the Union Gas Limited (Union Gas) proceeding.

Union Gas filed an application with the Ontario Energy Board (OEB) on June 6, 2018 for approval to dispose of and recover certain 2017 deferral and variance account (DVA) balances.

The OEB granted the following parties intervenor status and cost award eligibility:

- Building Owners and Managers Association Toronto (BOMA)
- Consumers Council of Canada (CCC)
- Energy Probe Research Foundation (Energy Probe)
- Federation of Rental-housing Providers of Ontario (FRPO)
- Industrial Gas Users Association (IGUA)
- London Property Management Association (LPMA)
- Ontario Greenhouse Vegetable Growers (OGVG)
- School Energy Coalition (SEC)
- Vulnerable Energy Consumers Coalition (VECC)

On December 6, 2018, the OEB issued its Decision and Rate Order (Decision) in which it set out the process for intervenors to file their cost claims, for Union Gas to object to the claims and for intervenors to respond to any objections raised by Union Gas.

BOMA, CCC, Energy Probe, FRPO, IGUA, LPMA, OGVG, SEC and VECC filed cost claims.

Union Gas and Enbridge Gas Distribution amalgamated effective January 1, 2019 to become Enbridge Gas Inc. (Enbridge Gas).

On January 9, 2019, Enbridge Gas filed a letter noting that BOMA and FRPO largely addressed issues that were similar to those raised by other parties in this proceeding, and that their costs claims exceeded the average of all cost claims by over \$9,000 and \$7,000, respectively. Enbridge Gas further noted that FRPO claimed 14 hours for argument preparation and its submission largely repeated the arguments it made in the Amalgamation proceeding.<sup>1</sup> Enbridge Gas indicated that in the Decision, the OEB found

---

<sup>1</sup> EB-2017-0306/EB-2017-0307.

that the broader issue of Union's Parkway Delivery Obligation (PDO) framework was out of scope for this proceeding.

In response, BOMA argued that the OEB should not reduce its cost award for two reasons. First, much of its billed time was spent in the settlement process, involving issues that eventually went to hearing. Moreover, BOMA claimed that disallowing a portion of a cost claim on the basis that it exceeded the average or mean cost claim is not consistent with the OEB's policy on costs, as eligible intervenors are to receive their reasonably incurred costs of participating in the proceeding.

In its response, FRPO argued that it had invested time in past proceedings to provide information and perspectives on gas supply and facility matters to the OEB that are often different from those expressed by the utility. FRPO noted that it invested hours in refining its PDO submissions, largely based upon the feedback of intervenors and preparation of the argument on other issues. The material refinements to the PDO argument came as a direct result of intervenor feedback, which differentiated the 2017 relief request from the base rate adjustment relief requested in the Amalgamation proceeding.<sup>2</sup> FRPO viewed its time as well invested and important to achieving this clarification and preserving ratepayers' interest on a material issue.

## Findings

The OEB reviewed the claims filed to ensure that they are compliant with the OEB's *Practice Direction on Cost Awards*. The OEB approves the cost claims for all parties with the exception of BOMA and FRPO.

BOMA submitted that cost claims should not be determined by using the average mean of hours claimed instead of actual work done by the party claimant. The OEB agrees that the simple computation of an average mean of hours claimed is not determinative of the award of costs to a claimant. The work done, the complexity of the issues addressed, and the assistance to the panel are the relevant criteria. The OEB is assisted, but not governed, by review of the quantum of all cost claims submitted by intervenors in a proceeding. The OEB also acknowledges the submissions of FRPO that assert that different degrees of participation in proceedings may necessitate a more substantial expenditure of time by intervenor representation.

---

<sup>2</sup> Ibid.

The OEB finds that the hours claimed by BOMA and FRPO were excessive given the nature of the application, which was a request to approve and dispose of certain DVA accounts balances. The OEB found that the issue of Union's PDO was out of scope and will reduce FRPO's claimed hours for argument preparation accordingly.

The OEB finds that 40 hours should have been sufficient to encompass all procedural steps, including the filing of submissions and the exploration of aspects of the proceeding of particular concern to BOMA and FRPO.

The hours for BOMA and FRPO are therefore reduced by 16.2 hours and 9.5 hours respectively. There will be no reduction for Energy Probe, which was only 1/2 hour above the 40 hours and had some hours below the maximum hourly rate from the cost award tariff.

The claim of FRPO also requires a reduction of \$0.63 (\$0.56 plus HST) to comply with the government's *Travel, Meal and Hospitality Expenses Directive*.

The OEB finds that the claims of CCC, Energy Probe, IGUA, LPMA, OGVG, SEC and VECC and the adjusted claims for BOMA and FRPO are reasonable, and Enbridge Gas shall reimburse each of these claims.

#### **THE ONTARIO ENERGY BOARD ORDERS THAT:**

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

• Building Owners and Managers Association Toronto	\$14,940.61
• Consumers Council of Canada	\$8,203.80
• Energy Probe Research Foundation	\$13,892.93
• Federation of Rental-housing Providers of Ontario	\$15,400.86
• Industrial Gas Users Association	\$9,712.96
• London Property Management Association	\$9,508.95
• Ontario Greenhouse Vegetable Growers	\$5,407.05
• School Energy Coalition	\$6,991.31
• Vulnerable Energy Consumers Coalition	\$12,176.57

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

**DATED** at Toronto February 4, 2019

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary