



Ontario
Energy
Board | Commission
de l'énergie
de l'Ontario

DECISION AND ORDER ON COST AWARDS

EB-2018-0188

ENBRIDGE GAS INC.

**Application for leave to construct natural gas transmission pipeline
and associated facilities in the Municipality of Chatham-Kent**

BEFORE: Susan Frank
Presiding Member

Michael Janigan
Member

Robert Dodds
Member

September 5, 2019

INTRODUCTION AND SUMMARY

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

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) under sections 90(1) and 97 of the *Ontario Energy Board Act, 1998* for leave to construct approximately 13.5 kilometres of natural gas transmission pipeline in the Municipality of Chatham-Kent and approval of the form of temporary land use agreement related to the construction of the proposed pipeline.

The OEB granted Anwaatin Inc. (Anwaatin) and Industrial Gas Users Association (IGUA) intervenor status and cost award eligibility.

On July 11, 2019, the OEB issued its Decision and Order in which it set out the process for intervenors to file their cost claims, for Enbridge Gas to object to the claims and for intervenors to respond to any objections raised by Enbridge Gas.

The OEB received cost claims from Anwaatin and IGUA. On August 8, 2019, Enbridge Gas noted that the cost claim submitted by Anwaatin was more than 200% higher than the cost claim submitted by IGUA. Enbridge Gas further noted that the OEB rejected the submission made by Anwaatin and concluded that Enbridge Gas has satisfied the duty to consult for the Project. Enbridge Gas suggested that the OEB consider Anwaatin's cost claim in relation to IGUA's cost claim.

On August 20, 2019, Anwaatin requested that the OEB award Anwaatin 100% of its eligible costs. Anwaatin stated that it participated responsibly and effectively and took a principled and robust approach to the proceeding. Anwaatin further stated that its participation focused on relevant and material issues that enhanced the OEB's understanding of key aspects of Enbridge Gas' application, including indigenous consultation and the duty to consult. Anwaatin argued that its interrogatories and final submissions were more comprehensive than IGUA's and dealt with issues of greater complexity. Anwaatin stated that it had also engaged a consultant who assisted in facilitating a face-to-face session at the May 2019 Chiefs' Council meeting on issues relevant to the proceeding, and in refining and communicating Anwaatin's interests in the proceeding, whereas IGUA relied solely upon legal counsel.

Findings

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

The OEB approves IGUA's cost claim as filed. The OEB finds the cost claim of Anwaatin to be excessive. The OEB understands the importance of a thorough review by the OEB of issues arising regarding compliance with the duty of an applicant to consult. However, this was a proceeding where no infringement of, or damage to, treaty or existing aboriginal rights was alleged, nor was there any evidence adduced as to objections from the communities sought to be represented by Anwaatin that might have been affected by the project. The project was also being constructed on existing road allowances and had received a letter of sufficiency from the Ministry of Energy, Northern Development and Mines. In the circumstances, the amount of time spent on the review of the application and submissions exceeded reasonable expectations and its value to the OEB. The OEB will accordingly reduce the Anwaatin fees claim by 50%.

The OEB finds that the claim of IGUA and the adjusted claim of Anwaatin are reasonable and that each of these claims shall be reimbursed by Enbridge Gas.

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:

- | | |
|------------------------------------|------------|
| • Anwaatin Inc. | \$8,376.13 |
| • Industrial Gas Users Association | \$5,208.85 |

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 September 5, 2019

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary