



BY EMAIL and RESS

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April 30, 2020
Our File: HV20190001

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Christine Long, Registrar & Board Secretary

Dear Ms. Long:

Re: EB-2018-0319 – Enbridge Open Bill – Cost Claim

We are counsel to the HVAC Coalition (“HVAC”). Enclosed, please find HVAC’s cost claim in this matter on the Board’s form with accompanying detailed dockets.

This was an unusual proceeding, in part because it took almost 17 months to deal with what appeared, at first glance, to be a routine application. In fact, the part of the proceeding that unrolled before the Board, in an oral hearing, was limited to two narrow issues, yet many parties appeared and it was hotly contested.

The OBA Program that was the subject of this proceeding is, as we noted in our Final Argument, a substantial program, and unique in the world. Almost 80% of Enbridge’s legacy EGD customers have third party charges on their Enbridge bills, and together they pay more than half a billion dollars annually to those third parties through this billing mechanism. More than 17 million annual transactions are being processed, and more than 25,000 disputes are being dealt with each year. Further, the potential exists that Enbridge will roll it out to the Union Gas territory, not just for DSM products (as they are now), but for everything.

The proceeding also took some turns that were time-consuming and detailed. In addition to normal Enbridge stakeholders, such as the customer groups, and HVAC Coalition, which has been involved in the development and evolution of Open Bill throughout, there were several Billers for whom the OBA Program is a key part of their business model.

This led to a protracted process. There was a first attempt at settlement near the beginning, which resulted in an agreement to negotiate further. With the Board's consent, there was further evidence, and discovery on that evidence, and then a negotiation. Unlike most ADRs, this one included a number of participants who rarely participate in Board settlement negotiations, and had particular perspectives on the issues. As a result, while obviously HVAC cannot discuss what transpired, some aspects were more similar to commercial negotiations than OEB settlement negotiations.

Despite the challenges in seeking settlement, after four ADR sessions (in addition to the initial one), and a multitude of side meetings and negotiations, the parties ended up resolving the vast majority of the matters in dispute. Only two issues remained which, while important, were still quite narrow. Then Enbridge filed changes that it proposed would cover one of those issues, and have an impact on the other one.

In the end, the OBA Program is stronger than it was, customers have more protections than they ever did before, and the program has been extended for a longer period, until the next rebasing. That will allow the Board and parties to see how the changes agreed in this proceeding, and ordered by the Board, will ensure that Enbridge's customers are treated fairly, and the OBA Program is not abused by any Billers.

The attached cost claim includes two rounds of interrogatories, several days of ADR and multiple settlement agreements, plus a two-day hearing in which HVAC filed and led evidence and responded to interrogatories, and final argument.

Approximately 20 hours working with our witness and other client representatives on the HVAC evidence, witness preparation, and responding to interrogatories has been included under Hearing Preparation. Approximately 15 hours working with the client and allies to prepare a detailed written proposal for other parties in the ADR has been included under Proposal Preparation.

HVAC believes that, given the size and pervasiveness of the OBA Program, and the positive changes to the program that arose from the process, the time spent was well justified.

Pending guidance from the Board Secretary's office, in the current remote work environment as a result of COVID-19, we have not been able to easily arrange to have the Board's form of affidavit commissioned. Rather, I have provided the recitation below, which includes the same statements that are on the Board's cost claim affidavit, for the purposes of attesting the accuracy of the enclosed cost claim. We hope in the current circumstances that this is acceptable to the Board.

In lieu of a commissioned affidavit, and as a member of the Law Society of Ontario and an Officer of the Ontario Court and, as such, mindful of my duties to the Ontario Energy Board, I, Jay Shepherd, provide this statement confirming that;

1. I am a legal representative of the HVAC Coalition and as such have knowledge of the matters attested to herein.

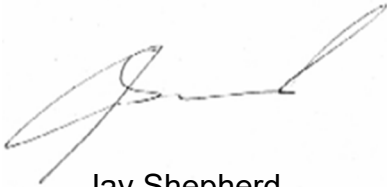
2. I have examined all of the documentation in support of the attached cost claim, including the attached “Summary of Fees and Disbursements Being Claimed”, “Statement(s) of Fees Being Claimed” and “Statement(s) of Disbursements Being Claimed”.

3. The attached “Summary of Fees and Disbursements Being Claimed”, “Statement(s) of Fees Being Claimed” and “Statement(s) of Disbursements Being Claimed” include only costs incurred and time spent directly for the purposes of the Party’s participation in the Ontario Energy Board process referred to above.

4. This cost claim does not include any costs for work done, or time spent, by a person that is an employee or officer of the Party as described in sections 6.05 and 6.09 of the Board’s Practice Direction on Cost Awards.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation



Jay Shepherd

cc: Martin Luymes, HVAC (by email)
Interested Parties (by email)

Ontario Energy Board
COST CLAIM FOR HEARINGS



Affidavit and Summary of Fees and Disbursements

This form should be used by a party to a hearing before the Board to identify the fees and disbursements that form the party's cost claim. Paper and electronic copies of this form and itemized receipts must be filed with the Board and served on one or more other parties as directed by the Board in the applicable Board order. Please ensure all required (yellow-shaded) fields are filled in and the Affidavit portion is signed and sworn or affirmed.

Instructions

- Required data input is indicated by yellow-shaded fields. Formulas are embedded in the form to assist with calculations.
- All claims must be in Canadian dollars. If applicable, state exchange rate and country of initial currency.

Rate: _____ Country: _____

- A separate "Detail of Fees and Disbursements Being Claimed" (comprising a "Statement of Fees Being Claimed" and a "Statement of Disbursements Being Claimed") is required for each lawyer, analyst/consultant and articling student/paralegal. However, only one "Summary of Fees and Disbursements" covering the whole of the party's cost claim should be provided.
- The cost claim must be supported by a completed Affidavit signed by a representative of the party.
- A CV for each consultant/analyst must be attached unless provided to the Board as prescribed on the Cost Award Tariff.

Except as provided in section 7.03 of the Practice Direction on Cost Awards, itemized receipts must be provided.

File # EB- <u>2018-0319</u>	Process: <u>Enbridge Open Bill Program</u>
Party: <u>HVAC Coalition</u>	Affiant's Name: <u>Jay Shepherd</u>
HST Number: <u>83673-5464-RT0001</u>	HST Rate Ontario: <u>13.00%</u>
Full Registrant <input checked="" type="checkbox"/>	Qualifying Non-Profit <input type="checkbox"/>
Unregistered <input type="checkbox"/>	Tax Exempt <input type="checkbox"/>
Other <input type="checkbox"/>	

Affidavit

I, _____, of the City/Town of Toronto
in the Province/State of Ontario, swear or affirm that:

1. I am a representative of the above-noted party (the "Party") and as such have knowledge of the matters attested to herein.
2. I have examined all of the documentation in support of this cost claim, including the attached "Summary of Fees and Disbursements Being Claimed", "Statement(s) of Fees Being Claimed" and "Statement(s) of Disbursements Being Claimed".
3. The attached "Summary of Fees and Disbursements Being Claimed", "Statement(s) of Fees Being Claimed" and "Statement(s) of Disbursements Being Claimed" include only costs incurred and time spent directly for the purposes of the Party's participation in the Ontario Energy Board process referred to above.
4. This cost claim does not include any costs for work done, or time spent, by a person that is an employee or officer of the Party as described in sections 6.05 and 6.09 of the Board's Practice Direction on Cost Awards.

Signature of Affiant

Sworn or affirmed before me at the City/Town of Toronto,
in the Province/State of Ontario, on _____, (date)

**Ontario Energy Board
COST CLAIM FOR HEARINGS**



Affidavit and Summary of Fees and Disbursements

Commissioner for taking Affidavits

File # EB- 2018-0319 **Process:** Enbridge Open Bill Program

Party: HVAC Coalition

Summary of Fees and Disbursements Being Claimed

Legal/consultant/other fees	\$	88,176.00
Disbursements	\$	-
HST	\$	11,462.88
Total Cost Claim	\$	99,638.88

Payment Information

Make cheque payable to: Shepherd Rubenstein Professional Corporation, in trust

Send payment to this address: 2200 Yonge Street
Suite 1302
Toronto, Ontario
M4S2C6

Ontario Energy Board COST CLAIM FOR HEARINGS



Detail of Fees and Disbursements Being Claimed

File # EB- <u>2018-0319</u>	Process: <u>Enbridge Open Bill Program</u>
Party: <u>HVAC Coalition</u>	Service Provider Name: <u>Jay Shepherd</u>
SERVICE PROVIDER TYPE (check one)	Year Called to Bar
Legal Counsel <input checked="" type="checkbox"/>	<input type="text" value="1980"/>
Articling Student/Paralegal <input type="checkbox"/>	
Consultant <input type="checkbox"/>	
Analyst <input type="checkbox"/>	
For Consultant/Analyst: <input type="checkbox"/> CV attached	Completed Years Practising/Years of Relevant Experience <input type="text" value="40"/>
<input type="checkbox"/> CV provided within previous 24 months	Hourly Rate: <input type="text" value="\$330"/>
	HST Rate Charged (enter %): <input type="text" value="13.0%"/>

Statement of Fees Being Claimed					
	Hours	Hourly Rate	Subtotal	HST	Total
Pre-hearing Conference					
Preparation		\$ 330.00	\$ -	\$ -	\$ -
Attendance		\$ 330.00	\$ -	\$ -	\$ -
Technical Conference					
Preparation		\$ 330.00	\$ -	\$ -	\$ -
Attendance		\$ 330.00	\$ -	\$ -	\$ -
Interrogatories					
Preparation	36.7	\$ 330.00	\$ 12,111.00	\$ 1,574.43	\$ 13,685.43
Responses	47.1	\$ 330.00	\$ 15,543.00	\$ 2,020.59	\$ 17,563.59
Issues Conference					
Preparation		\$ 330.00	\$ -	\$ -	\$ -
Attendance		\$ 330.00	\$ -	\$ -	\$ -
ADR - Settlement Conference					
Preparation	43.9	\$ 330.00	\$ 14,487.00	\$ 1,883.31	\$ 16,370.31
Attendance	33.0	\$ 330.00	\$ 10,890.00	\$ 1,415.70	\$ 12,305.70
Proposal Preparation	32.4	\$ 330.00	\$ 10,692.00	\$ 1,389.96	\$ 12,081.96
Argument					
Preparation	25.2	\$ 330.00	\$ 8,316.00	\$ 1,081.08	\$ 9,397.08
Oral Hearing					
Preparation	36.9	\$ 330.00	\$ 12,177.00	\$ 1,583.01	\$ 13,760.01
Attendance	12.0	\$ 330.00	\$ 3,960.00	\$ 514.80	\$ 4,474.80
Other Conferences					
Preparation		\$ 330.00	\$ -	\$ -	\$ -
Attendance		\$ 330.00	\$ -	\$ -	\$ -
Case Management					
		\$ 170.00	\$ -	\$ -	\$ -
TOTAL SERVICE PROVIDER FEES			\$ 88,176.00	\$ 11,462.88	\$ 99,638.88

**Ontario Energy Board
COST CLAIM FOR HEARINGS**



Detail of Fees and Disbursements Being Claimed

File # EB- 2018-0319

Process: Enbridge Open Bill Program

Party: HVAC Coalition

Service Provider Name: Jay Shepherd

Statement of Disbursements Being Claimed			
	Net Cost	HST	Total
Scanning/Photocopy			\$ -
Printing		\$ -	\$ -
Courier			\$ -
Telephone/Fax			\$ -
Transcripts			\$ -
Travel: Air			\$ -
Travel: Car			\$ -
Travel: Rail			\$ -
Travel (Other):			\$ -
Parking			\$ -
Taxi			\$ -
Accommodation			\$ -
Meals			\$ -
Other:			\$ -
Other:			\$ -
Other:			\$ -
TOTAL DISBURSEMENTS:	\$ -	\$ -	\$ -

Ontario Energy Board
COST CLAIM FOR HEARINGS
Detail of Fees and Disbursements Being Claimed



Date	Explanation	Lwyr	Hours
20190103	Review prefiled evidence and Notice	JCS	0.8
20190108	Various emails, Review issues	JCS	0.2
20190111	Review application, Client communications, Draft and file Notice of Intervention	JCS	1.2
20190115	Review PO #1, Many emails, Send material to client	JCS	0.5
20190117	Obtain list of billers, Client reporting, Review list, Many emails	JCS	0.7
20190123	Client reporting and input, Many emails	JCS	1.0
20190124	Review options re agreement	JCS	0.3
20190128	Review agreement, Many emails, Review IRs of CME, IGUA, BOMA and OEB Staff	JCS	4.6
20190129	Draft, revise and finalize interrogatories, Many emails, Reporting to client	JCS	4.5
20190206	Many emails, Issues analysis and reporting	JCS	2.0
20190207	Many emails, Advice to client, Scheduling	JCS	0.5
20190208	Initial review of interrogatory responses, Many emails	JCS	1.6
20190211	Many emails	JCS	0.2
20190213	Review PO #2 and scheduling, Many emails	JCS	0.4
20190227	Detailed review of evidence, Detailed report to client board of directors, Many emails	JCS	3.0
20190228	Many emails, Review issues	JCS	0.4
20190303	Prep for ADR	JCS	1.4
20190304	Many emails	JCS	0.3
20190305	Prep for ADR, Attend Board meeting, Many emails	JCS	4.4
20190306	Attend ADR, Many emails, Telephone conversations with client	JCS	6.0
20190307	Review letter, Many emails	JCS	0.2
20190312	Various emails, Review PO #3	JCS	0.2
20190314	Review and edit agreement, Many emails	JCS	0.7
20190317	Review historical information on Bill inserts	JCS	0.6
20190318	Many emails, Review proposed changes, Review prior documents	JCS	0.9
20190319	Telephone call with David Stevens, Report to client, Many emails, Telephone call with Martin Luymes	JCS	1.4
20190321	Many emails negotiating wording, Telephone discussion, Reporting to client	JCS	1.1
20190322	Many emails re Enercare position, Review agreement as filed	JCS	0.5
20190327	Various emails	JCS	0.1
20190328	Review Vista intervention, Review Staff comments, Many emails, Review of agreement, Telephone call with Martin Luymes	JCS	1.6
20190329	Analysis of issues, Many emails	JCS	0.5
20190330	Review evidence, Gap analysis	JCS	1.2
20190401	Review Ministry letter, Many emails, Review Federal Court materials, Meet with Mark	JCS	1.0
20190403	Client report prep, Many emails	JCS	1.0
20190404	Review PO #4 and scheduling, Report to client	JCS	0.5

20190405	Review new Notice	JCS	0.2
20190415	Review Vista letter, Seek instructions from client re conflict, Many emails	JCS	0.4
20190418	Many emails, Review updated interrogatory responses	JCS	1.0
20190419	Various emails	JCS	0.1
20190421	Detailed analytics	JCS	3.0
20190422	Meet with Martin and Sandy, Draft report to HVAC Board, Revise and send, Many emails	JCS	3.0
20190423	Many emails	JCS	0.1
20190424	Meet with Martin and Roger re instructions, Deal, Many emails, Prep, Research re complaints, Review decision on interventions	JCS	2.5
20190425	Review Energy Probe submission	JCS	0.1
20190429	Many emails	JCS	0.1
20190501	Many emails, Review Reliance letter, Review OEB letter	JCS	0.3
20190502	Prep for board meeting, Many emails, Telephone conversation with Martin	JCS	3.4
20190503	Attend at board meeting, Many emails, Review input	JCS	2.4
20190504	Various emails	JCS	0.1
20190506	Meet with Dave Stevens, Many emails, Report to client, Formal email to Enbridge	JCS	2.0
20190507	Report to client on strategic options, Many emails	JCS	1.2
20190509	Telephone call with Martin, Analysis of Issues	JCS	0.8
20190510	Draft, revise and file interrogatories, Review interrogatories of others, Many emails	JCS	3.8
20190529	Initial review of interrogatory responses, Many emails	JCS	1.0
20190530	Many emails	JCS	0.3
20190531	Review interrogatory responses, Many emails, Review response from Stevens, Reporting	JCS	2.1
20190601	Review spreadsheet, Analytics	JCS	1.3
20190603	Report to client, Draft, revise and send email to Stevens, Telephone conversation with Martin, Many emails	JCS	3.5
20190604	Many emails, Circulate draft to Vista, Reporting, Scheduling	JCS	1.5
20190605	Conference call with Vista, Many emails, Circulate drafts to some parties, Telephone call with David Stevens, Telephone call with Mart	JCS	4.0
20190606	Conference call with Enercare, Emails with Reliance and send proposal, Many emails, Reporting	JCS	1.8
20190607	Many emails	JCS	0.3
20190610	Telephone conversations with Darryl Mann, Alf Apps, and Patrick Duffy, Meeting with Mark, Many emails, Circulate proposal to all partie	JCS	3.6
20190611	Many emails and telephone calls, Prep for stakeholder meeting	JCS	2.7
20190612	Attend at ADR session, Many emails, Detailed reporting	JCS	9.0
20190613	Many emails	JCS	0.2
20190617	Many emails re scheduling	JCS	0.3

20190618	Review PO #5 and Scheduling	JCS	0.3
20190619	Review Energy Probe submission, Many emails	JCS	0.5
20190620	Review dispute resolution process, Various emails	JCS	0.4
20190625	Initial review of positions, Many emails	JCS	1.0
20190627	Review positions from other parties	JCS	1.0
20190630	Review positions	JCS	1.2
20190704	Meet with Mark	JCS	0.3
20190711	Review VECC intervention	JCS	0.1
20190717	Review	JCS	0.2
20190718	Many emails, Review VECC letter	JCS	0.3
20190719	Review summary of positions, Conference call with Martin, Many emails	JCS	3.0
20190721	Review positions of others and analysis	JCS	2.0
20190723	Telephone conversation with Martin, ADR Memo	JCS	2.8
20190724	Prep for ADR	JCS	1.0
20190725	Prep for ADR, Many emails, Review Vista materials	JCS	2.0
20190726	Attend at ADR, Many emails, Report to Client	JCS	9.0
20190727	Analysis and scheduling	JCS	0.5
20190730	Strategic analysis	JCS	1.0
20190731	Review Enbridge materials, Many emails	JCS	0.5
20190801	Many emails, Review materials from Enbridge	JCS	0.5
20190802	Many emails, Review letter to Board	JCS	0.2
20190803	Synthesis of positions, Email to Stevens, Revised report for Board of Directors, Various emails	JCS	2.7
20190804	Revise and finalize report to the Board of Directors	JCS	1.0
20190807	Review PO#6 and scheduling, Many emails re client meeting	JCS	0.5
20190814	Prep for Meeting, Many emails	JCS	0.5
20190815	Prep for meeting, Many emails, Attend meeting	JCS	2.0
20190830	Prep for continued ADR	JCS	1.0
20190904	Prep for meeting, Attend (by telephone) at ADR, Many emails	JCS	7.6
20190905	Report to client	JCS	2.0
20190906	Attend Board meeting, Many emails, Report to David	JCS	1.3
20190907	Draft and send unsettled issues	JCS	0.6
20190911	Review draft agreement and letter, Many emails	JCS	1.4
20190916	Review utility letter	JCS	0.1
20190917	Review PO#7	JCS	0.5
20190918	Many emails, Review comments and edits of others	JCS	0.5
20190919	Many emails, Review comments and edits of others	JCS	0.3
20190920	Many emails, Review comments and edits of others	JCS	1.1
20190923	Many emails	JCS	0.3
20190924	Many emails, Review comments	JCS	1.1
20190925	Telephone conversation with David Stevens, Many emails, Review correspondence and positions of others, Review various edits of agreement	JCS	3.3

20190926	Telephone conversation with David Stevens, Many emails, Report to client	JCS	2.1
20190927	Analysis, Telephone conversation with client	JCS	0.9
20191002	Many emails	JCS	0.5
20191003	Many emails	JCS	0.2
20191004	Conference call with Martin, Glen and Ian, Many emails, Prep	JCS	1.3
20191010	Many emails, Scheduling	JCS	0.4
20191011	Prepare issues and positions summary, Research, Many emails, Report to client	JCS	3.4
20191012	Many emails, Draft and send issues document	JCS	3.1
20191014	Many emails, Revise issues document	JCS	1.0
20191015	Revise issues doc, Many emails, Prep for ADR	JCS	1.8
20191016	Attend at ADR continuation, Many emails, Meet with other parties, Report to client, Finalize and circulate issues document	JCS	5.5
20191017	Many emails, Conversations with other parties	JCS	0.2
20191018	Many emails	JCS	0.2
20191022	Many emails	JCS	0.3
20191023	Final sign off, Many emails	JCS	0.3
20191105	Review staff submissions	JCS	0.3
20191111	Review PO #8, Scheduling, Many emails	JCS	0.6
20191122	Review evidence	JCS	1.0
20191203	Review evidence, Draft, revise and file Interrogatories, Review interrogatories of others, Many emails	JCS	2.8
20191204	Meet with Mark	JCS	0.2
20191205	Prep for client and intervenor meetings	JCS	1.4
20191206	Meet with Martin, Glen, Roger and Ian, Draft and file letter, Contact with VECC, Many emails	JCS	4.3
20191209	Many emails	JCS	0.2
20191216	Initial review of Interrogatory Responses, Various emails	JCS	0.6
20191217	Various emails	JCS	0.1
20191219	Review Board letter and scheduling, Various emails	JCS	0.5
20191226	Email to Martin, Review IRs	JCS	0.3
20200101	Various emails	JCS	0.1
20200102	Telephone conversation with Martin	JCS	0.3
20200103	Telephone conversation with Martin, Review interrogatory responses, Review evidence options	JCS	4.0
20200105	Review evidence and issues, Outline of evidence requirements, Various emails	JCS	0.5
20200106	Draft notes for Grochmal evidence, Many emails, Telephone conversation with Ian Mondrow	JCS	3.0
20200108	Many emails, Circulate draft	JCS	2.0
20200109	Review and edit evidence, Many emails, Review Visa draft	JCS	1.8
20200110	Finalize and file evidence, Review revised Vista evidence, Review Reliance submission, Many emails	JCS	4.1
20200111	Many emails, Check filings	JCS	0.2

20200113	Many emails, Research re evidence lack	JCS	0.3
20200115	Many emails, Review new evidence	JCS	0.5
20200116	Review PO #10, Various emails	JCS	0.2
20200117	Review interrogatories and forward, Many emails, Hearing planning	JCS	1.8
20200120	Many emails and scheduling, Review draft responses	JCS	0.6
20200122	Many emails, Review Vista materials, Drafting positions	JCS	1.1
20200123	Review draft interrogatory responses, Witness prep, Many emails, Analysis re quasi IRs	JCS	5.6
20200124	Finalize and file interrogatory responses, Review interrogatory responses of Vista, Many emails	JCS	2.5
20200127	Draft and circulate position paper, Revise and file, Many emails, Time estimate	JCS	1.4
20200128	Review positions of parties, Many emails, Review Argument in Chief	JCS	1.0
20200129	Prepare for hearing, Many emails, Prepare and circulate Compendium	JCS	6.0
20200130	Oral Hearing, Prep, Many emails	JCS	9.1
20200131	Oral hearing, Prep, Review transcripts	JCS	5.2
20200206	Prep for Final Argument	JCS	0.5
20200207	Review Argument In Chief	JCS	1.0
20200216	Research	JCS	1.1
20200217	Drafting argument	JCS	3.0
20200218	Drafting argument, Telephone conversation with Martin, Many emails, Circulate to client	JCS	6.1
20200219	Circulate draft argument, Many emails, Review EP draft, Editing argument	JCS	1.6
20200220	Many emails, Review comments	JCS	1.0
20200221	Final review and edit, then file argument, Review arguments of others	JCS	6.0
20200222	Various emails	JCS	0.1
20200303	Advisory email to Martin, Background review, Various emails	JCS	1.1
20200306	Review reply submissions	JCS	2.0
20200326	Client Report	JCS	0.5
20200416	Review decision and reporting	JCS	0.7
20200417	Telephone conversation with client, Many emails	JCS	0.5
			267.2

\$88,176.00

\$11,462.88

\$99,638.88