



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

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

**EB-2019-0159**

**ENBRIDGE GAS INC.**

**Application to construct natural gas pipeline and associated facilities in the  
City of Hamilton**

**BEFORE: Michael Janigan**  
Presiding Member

**Cathy Spoel**  
Member

**Robert Dodds**  
Member and Vice-Chair

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**July 15, 2020**

## INTRODUCTION AND SUMMARY

Enbridge Gas Inc. (Enbridge Gas) filed an application with the Ontario Energy Board (OEB) pursuant to section 90(1) and 97 of the *Ontario Energy Board Act 1998*, S.O. 1998, c.15 (Schedule B) for leave to construct approximately 10.2 kilometres of 48-inch diameter natural gas transmission pipeline and associated facilities in the City of Hamilton (Project). Enbridge Gas also included in the application an Integrated Resource Planning (IRP) Proposal and requested that the OEB determine it to be reasonable and appropriate. The OEB in Procedural Order No. 1, issued on January 30, 2020, determined that the IRP Proposal, as it relates to Enbridge Gas' future projects, will be reviewed separately at a date to be set by the OEB.

The OEB conducted several steps of a written hearing according to the procedural schedule, which included the Issues List process, written interrogatories to Enbridge Gas and the preparation of intervenor evidence. The proceeding was adjourned, upon Enbridge Gas' request, prior to Enbridge Gas filing its interrogatory responses and prior to the filing of intervenor evidence. On May 4, 2020, Enbridge Gas requested that the OEB temporarily adjourn the proceeding due to uncertainties resulting from the COVID-19 pandemic impacts on the Project. Enbridge Gas proposed to report to the OEB as soon as reasonably possible and certainly within six months of the date of the adjournment as to whether it had sufficient clarity to proceed with the application as filed. In the interim, Enbridge Gas stated that it is continuing to work with First Nations and affected stakeholders, including the City of Hamilton, landowners and permitting agencies, to advance the Project.

On May 19, 2020, by way of Procedural Order No. 7 and Decision on Adjournment (PO 7 Adjournment Decision) the OEB ordered that the proceeding be adjourned until further notice and that Enbridge Gas report to the OEB no later than six months from May 19, 2020 on the prospects of continuing with its application, and indicate if any updates to the evidence will be undertaken in the event that the proceeding continues. The PO 7 Adjournment Decision also set out the process for intervenors to file interim cost claims, for Enbridge Gas to object to the claims and for intervenors to respond to any objections raised by Enbridge Gas.

On June 16, 2020, Enbridge Gas filed a letter stating that as no intervenor evidence has been provided to Enbridge Gas, it is not possible to comment on its relevance, or whether it is within the scope of the approved Issues List, and avoids duplication. Enbridge Gas further stated that if the OEB determines that it is appropriate to award the costs submitted by cost-eligible intervenors at this time, that it is also appropriate to take such interim awards into account at the time that final costs are assessed once the

relevance and overall contribution of intervenors (and any expert evidence they produce) can be assessed.

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

- Association of Power Producers of Ontario (APPrO)
- Building Owners and Managers Association (BOMA)
- Canadian Manufacturers and Exporters (CME)
- Consumers Council of Canada (CCC)
- Energy Probe Research Foundation (Energy Probe)
- Environmental Defence (Environmental Defence)
- Federation of Rental-housing Providers of Ontario (FRPO)
- Green Energy Coalition (GEC)
- Industrial Gas Users Association (IGUA)
- London Property Management Association (LPMA)
- Pollution Probe (Pollution Probe)
- School Energy Coalition (SEC)
- Vulnerable Energy Consumers Coalition (VECC)

The Low Income Energy Network (LIEN) withdrew its request for intervenor status before a determination on cost eligibility was made by the OEB. The OEB will allow LIEN to file a cost claim at this time.

The OEB received cost claims from APPrO, BOMA, CME, CCC, Energy Probe, Environmental Defence, FRPO, GEC, IGUA, LPMA, LIEN <sup>1</sup>, Pollution Probe, SEC and VECC.

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<sup>1</sup> In a letter dated February 11, 2020 LIEN withdrew its request for intervenor status and said that it intended to seek intervenor status and cost eligibility in any future IRP Proposal proceeding. The OEB acknowledged the withdrawal of LIEN on March 6, 2020. LIEN filed claim for cost it incurred prior the withdrawal as an intervenor in the EB-2019-0159.

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## 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 cost award process is designed to ensure that qualified intervening participants are compensated for interventions that provide value and assistance to the OEB in the adjudication process. The OEB has received intervenor cost claims setting out various amounts of work done to date by intervenors to accomplish that goal. Some of that work has been directed to process and procedural issues, including defining the scope of the hearing and discovery on the issues set out in the approved Issues List. There are also amounts claimed for hearing preparation and intervenor evidence preparation.

There is a significant disparity in the size of the cost claims which may, to some extent, be due to the different timing of work done and preparation by intervenors, as well as the degree and scope of their involvement in the issues themselves. At this stage, it is difficult to make a final conclusion on the value of this participation, or make useful comparisons between the quantum of the work done by intervening parties and the result. In the OEB's view that assessment can best be made at the conclusion of proceedings.

At the same time, the OEB recognizes that the adjournment of the application has not been requested by the intervening parties, and a lengthy delay for payment of work done by counsel and consultants may be financially onerous.

In balancing these concerns, the OEB will make an interim cost order providing for the payment of interim cost claims up to an amount of \$30,000 subject to the following conditions and understandings: (i) the amounts will be awarded on an interim basis and will be considered in terms of assessing the reasonableness of any final cost claim. This will be done in accordance with the OEB's approach to compensating for value in the context of the entire participation; (ii) those intervenors who have invested significantly greater amounts of time in the process to date, including preparation for the oral hearing will be expected to show the results of such investments in reductions to the amount of time spent on these tasks included in the final claim. This is particularly the case for those parties who will not be offering evidence in this proceeding; (iii) intervenors should ensure that there is no double billing for tasks that have been included in the claim for an interim cost order.

**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:

• Association of Power Producers of Ontario	\$ 5,032.91
• Building Owners and Managers Association	\$8,691.48
• Canadian Manufacturers and Exporters	\$ 3,227.28
• Consumers Council of Canada	\$ 5,966.40
• Energy Probe Research Foundation	\$ 9,670.20
• Environmental Defence	\$ 20,721.94
• Federation of Rental-housing Providers of Ontario	\$30,000.00
• Green Energy Coalition	\$30,000.00
• Industrial Gas Users Association	\$11,930.88
• London Property Management Association	\$2,722.17
• Low Income Energy Network	\$692.23
• Pollution Probe	\$30,000.00
• School Energy Coalition	\$12,480.85
• Vulnerable Energy Consumers Coalition	\$5,230.78

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 July 15, 2020

**ONTARIO ENERGY BOARD**

*Original signed by*

Christine E. Long  
Registrar and Board Secretary