



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

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# **DECISION AND ORDER ON COST AWARDS**

**EB-2019-0271**

**ENBRIDGE GAS INC.**

**Application for approval of natural gas demand side management plans for  
2021**

**BEFORE: Michael Janigan**  
Presiding Member

**Susan Frank**  
Member

**Lynne Anderson**  
Member

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**September 9, 2020**

## 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.

On November 27, 2019, the OEB received an application from Enbridge Gas for an OEB order effective January 1, 2021 that approves Enbridge Gas' 2021 DSM Plans. The 2021 DSM plans roll-forward the OEB-approved 2020 DSM Plans including all programs, scorecards and other parameters (i.e., budgets, targets, and performance incentive structure). The OEB granted the following parties intervenor status and cost award eligibility:

- Association of Power Producers of Ontario (APPrO)
- Building Owners and Managers Association, Greater Toronto (BOMA)
- Canadian Manufacturers and Exporters (CME)
- Consumers Council of Canada (CCC)
- Energy Probe Research Foundation (Energy Probe)
- Environmental Defence
- Federation of Rental-housing Providers of Ontario (FRPO)
- Green Energy Coalition (GEC)
- Housing Services Corporation (HSC)
- Industrial Gas Users Association (IGUA)
- London Property Managers Association (LPMA)
- Low Income Energy Network (LIEN)
- Ontario Greenhouse Vegetable Growers (OGVG)
- Ontario Sustainable Energy Association (OSEA)
- Pollution Probe
- School Energy Coalition (SEC)
- Vulnerable Energy Consumers Coalition (VECC)

On July 16, 2020, 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 by the due date from APPrO, BOMA, CME, CCC, Energy Probe, Environmental Defence, FRPO, GEC, IGUA, LPMA, LIEN, OSEA, OGVG, Pollution Probe and SEC. VECC filed its cost claim on August 6, 2020. The OEB accepts VECC's cost claim notwithstanding the late filing. HSC did not file a cost claim.

On June 23, 2020, Enbridge Gas filed a response and indicated that there was a very broad range in costs claimed by approved intervenors, from the minimum claim of approximately \$1,900 (CME) to the maximum claim of approximately \$16,600 (Pollution Probe), with the average claim being approximately \$7,500.

Enbridge Gas submitted that the OEB should consider (i) the uncomplicated and straight forward nature of the roll-over approvals sought by Enbridge Gas in the Application and the modest amount of supporting pre-filed evidence that parties would have considered; (ii) the OEB's defined scope of the proceeding as set out in PO No. 1; (iii) the OEB's ultimate findings regarding the relevance of the issues raised by certain intervenors through interrogatories and argument; and (iv) the OEB's statement in PO No. 1 that, "Cost awards will not be granted for participation that goes beyond the scope of the hearing ...".<sup>1</sup>

Enbridge Gas was also concerned with the costs claimed by Pollution Probe, which exceeded the average costs of all other intervenors by more than two times and the cost claims of the next highest intervenors (GEC and VECC) by more than 20%. Enbridge Gas was concerned that many of the issues raised by Pollution Probe clearly exceeded the scope of the proceeding as defined by the OEB in PO No. 1, which limited the unique incremental value that Pollution Probe provided to the OEB's review of Enbridge Gas' Application.

Enbridge Gas noted that of the 16 approved intervenors who participated in this proceeding and submitted cost claims, four of those parties represented environmental advocacy groups (Environmental Defence, GEC, Pollution Probe and OSEA), resulting in disproportionate representation considering that their interests overlap with those of OEB Staff and other intervenors. Enbridge Gas further noted that those four parties had collectively submitted cost claims amounting to approximately 33% of total costs claimed by approved intervenors.

In response to Enbridge Gas' objection, Pollution Probe argued that its interrogatories were specifically relevant to 2021 and the scope of the proceeding. Pollution Probe stated that Enbridge Gas provided a full response to all of its interrogatories and did not identify anything as being out of scope. Pollution Probe stated that they conducted detailed analysis of the 2021 DSM Plan and provided submissions that were relevant to the scope of the 2021 DSM plan.

With respect to costs claim exceeding the average costs of all other intervenors by more than two times and the cost claims of the next highest intervenors by more than 20%,

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<sup>1</sup> EB-2019-0271, OEB Procedural Order No. 1, February 24, 2020, p. 2.

Pollution Probe stated that they acted responsibly during this proceeding and submitted that their cost claim was appropriate given the level of participation, analysis and enhanced stakeholder coordination. Pollution Probe further stated that their costs were conservative and contributed to significantly lowering the costs that would have been incurred if Pollution Probe did not play this coordination role. Pollution Probe stated that they conducted detailed analysis specifically related to 2021 and shared material early which provided an opportunity for other stakeholders to reduce duplication and provided an opportunity for a more efficient and less costly process.

With respect to the environmental advocacy groups, Pollution Probe noted that Enbridge Gas has made assumptions by sorting participating stakeholders into generalized groups (e.g. environmental, consumer, etc.) which did not appear to be based on accurate information. Pollution Probe noted that some of the stakeholders did represent environmental policy positions. However, consumer, business and municipal interests were also represented.

In response to Enbridge Gas' objection, GEC noted that they brought expertise to the matters before the OEB by retaining Mr. Chris Neme of Energy Futures Group who has been retained in several DSM cases and has unparalleled experience in DSM and in analysis of Enbridge Gas' plans. GEC noted that other parties routinely rely on GEC to bring Mr. Neme's expertise and specific knowledge of Enbridge Gas' DSM activities forward. GEC further noted that Mr. Neme's input identified and illuminated a key issue before the OEB; namely the impact of new Federal regulations on the Residential Home Retrofit Programs which have a large contribution to both results and shareholder incentives.

With respect to Enbridge Gas' inadequate interrogatory responses and resulting costs related to its Motion, GEC stated the Enbridge Gas initially refused to provide answers to several of its interrogatories necessitating a motion for further and better responses. GEC stated that the OEB agreed with their request and ordered further responses. GEC further stated that roughly 13 of the approximately 19 hours of counsel time were attributable to efforts to voluntarily obtain better responses and prosecute the motion, including responding to Enbridge Gas' 20 pages of submissions.

With respect to Enbridge Gas' concern about environmental intervenors, GEC stated that they are not a sole environmental organization, they are a coalition of environmental groups created explicitly to reduce overlapping interventions before the OEB. GEC noted that its policy stance and expertise on various issues can differ from those of ED, OSEA and Pollution Probe. However, GEC indicated that although it may not share identical policy stances with ED on some key matters, they have been able to

jointly sponsor evidence in several cases, including this proceeding, in an effort to eliminate any duplication.

## Findings

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

As the panel noted in its Decision, the intervening parties, for the most part, confined their participation to the limited ambit of issues that were to be determined related to the 2021 DSM program year. However, the OEB also expects that the total time claimed for intervenor participation is within a range that is appropriate relative to the defined scope of the proceeding.

The OEB approves the total cost claim of GEC as filed. GEC incurred additional costs due to insufficient interrogatory responses that the OEB ultimately determined should have been provided by Enbridge Gas.

For the remaining intervenors, due to the limited nature of evidence and the OEB's indication of a narrow scope for this proceeding, cost claims will be limited to a maximum number of 35 hours. The OEB has determined that this maximum number of hours respects a reasonable amount of review, analysis and preparation time.

LIEN and Pollution Probe are the only two intervenors that surpassed this threshold. LIEN's total claimed hours of 46.4 have been reduced proportionally based on a weighted average rate for the service providers. LIEN is approved for a revised cost award of \$10,227.19.

Pollution Probe claimed 44.5 total hours. Pollution Probe is approved for a revised cost award of \$13,051.50.

The OEB finds that the claims APPrO, BOMA, CME, CCC, Energy Probe, Environmental Defence, FRPO, GEC, IGUA, LPMA, OSEA, OGVG, SEC and VECC and the adjusted claims of LIEN and Pollution Probe 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:

• Association of Power Producers of Ontario	\$3,977.60
• Building Owners and Managers Association, Greater Toronto	\$3,356.10
• Canadian Manufacturers and Exporters	\$1,901.79
• Consumers Council of Canada	\$5,779.95
• Energy Probe Research Foundation	\$11,778.90
• Environmental Defence	\$4,808.15
• Federation of Rental-housing Providers of Ontario	\$6,525.75
• Green Energy Coalition	\$13,557.39
• Industrial Gas Users Association	\$7,578.29
• London Property Managers Association	\$5,071.44
• Low Income Energy Network	\$10,227.19
• Ontario Greenhouse Vegetable Growers	\$2,621.60
• Ontario Sustainable Energy Association	\$5,314.11
• Pollution Probe	\$13,051.50
• School Energy Coalition	\$12,865.05
• Vulnerable Energy Consumers Coalition	\$5,488.03

**DATED** at Toronto September 9, 2020

**ONTARIO ENERGY BOARD**

*Original signed by*

Christine E. Long  
Registrar and Board Secretary