



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

DECISION AND ORDER ON 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 Commissioner

Cathy Spoel
Commissioner

Robert Dodds
Commissioner

January 14, 2021

INTRODUCTION

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 or 2021 Dawn Parkway Expansion). Enbridge Gas also applied for approval of the forms of easement agreements related to the construction of the Project.

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. No party opposed the adjournment.

On May 19, 2020, the OEB adjourned the proceeding until further notice. The OEB conditioned the adjournment by Enbridge Gas filing an update on the status of the Project by November 19, 2020.

On July 15, 2020, the OEB issued a Decision and Order on Interim Costs Awards (Decision on Interim Costs). The Decision on Interim Costs ordered Enbridge Gas to pay awarded interim costs subject to certain conditions regarding the final cost awards.

Prior to the adjournment on May 19, 2020, the OEB conducted several steps of a written hearing according to the procedural schedule, which included the Issues List process and a process for written interrogatories to Enbridge Gas. The OEB also set the schedule for the filing of intervenor evidence. The proceeding was adjourned prior to Enbridge Gas filing its interrogatory responses and prior to the filing of intervenor evidence. Federation of Rental-housing Providers of Ontario (FRPO), Green Energy Coalition (GEC) and Environmental Defence indicated on the record that they would file Intervenor Evidence.

In the Decision on the Interim Cost, the OEB ordered that Enbridge Gas pay out cost claims to the eligible intervenors up to a maximum of \$30,000. The following intervenors filed cost claims, over \$30,000:

	Total Cost Claimed
FRPO	\$59,365.68
GEC	\$34,988.41
Pollution Probe	\$41,429.19

Each of FRPO, GEC and Pollution Probe received \$30,000 in cost awards. All other intervenors received their full cost awards as claimed.

On October 22, 2020 Enbridge Gas filed a notice of withdrawal of the application in accordance with section 20 of the OEB's *Rules of Practice and Procedure* (Rules). Enbridge Gas stated that there is no longer a need for the Project in the time frame as originally proposed on account of the on-going COVID-19 Pandemic.

On November 18, 2020, the OEB issued Procedural Order No. 8 dealing with Final Cost Awards Process and Application Withdrawal. Procedural Order No. 8 set out the process for FRPO, GEC and Pollution Probe to file submissions on the reasonableness of their total cost claims and for Enbridge Gas to respond. All of these parties filed submissions.

The OEB approves certain additional costs claimed by FRPO, GEC and Pollution Probe beyond the costs awarded by the Decision on Interim Cost. A summary of submissions and the findings with reasons are presented below.

SUBMISSIONS

FRPO

On November 30, 2020, FRPO filed its submission stating that it should be awarded the full amount of costs claimed and that Enbridge Gas should be ordered to pay to FRPO the balance of \$29,365.68. FRPO discussed the potential value of its evidence in illustrating a market opportunity alternative to the proposed Project, in the event that the proceeding had not been adjourned.

FRPO emphasized that its priority, in terms of its cost claim for the evidence preparation, is to obtain a reasonable assessment of the extensive work it performed in preparing to submit compelling evidence related to the market opportunity alternative.

GEC

On November 25, 2020, GEC filed its submission and noted that it retained three experts to address the issues of gas forecasts and demand-reducing alternatives.

GEC stated that it submitted 62 (often multi-part) interrogatories and that its claim of \$34,988 (inclusive of HST), being less than \$5,000 above the threshold, was reasonable when compared to the claims of other intervenors.

Pollution Probe

On November 24, 2020, Pollution Probe filed its submission noting that it followed the process defined by the OEB, and that it acted responsibly and efficiently during the proceeding, coordinating with stakeholders to avoid duplication.

Pollution Probe stated that upon receiving the OEB's adjournment notice on May 19, 2020, it ceased all proceeding activity and submitted that the residual costs of \$11,429.19 were reasonable and well within the range of other intervenors in a similar position.

Enbridge Gas

On December 7, 2020, Enbridge Gas replied to the cost claim submissions from FRPO, GEC and Pollution Probe. Enbridge Gas did not support the submission by FRPO regarding the feasibility of its proposed market-based alternative.

Regarding the submissions of GEC and Pollution Probe, Enbridge Gas reiterated its submission regarding cost claims made on June 16, 2020, stating that it was concerned that despite claiming costs in excess of the threshold established by the OEB for interim cost awards, GEC and Pollution Probe still had not produced any expert evidence to support their cost claims in this proceeding.

In reply to Enbridge Gas' comments on the final cost claims, Pollution Probe stated that Pollution Probe and its expert witness spent significant time preparing the evidence and were on track to complete and file that evidence by the June 1, 2020 deadline.

FINDINGS

In the Interim Cost Decision and Order, the OEB set out its findings on the issue of interim costs for qualified intervenors, as well as the proposed evaluation of final costs that would be rewarded at the conclusion of the proceeding.

The OEB made an interim cost order providing for the payment of interim cost claims up to the amount of \$30,000 subject to the following conditions and understandings: (i) the amounts would be awarded on an interim basis and would be considered in assessing the reasonableness of any final cost claim; this would be done in accordance with the OEB's approach to compensating for value in the context of the entire participation; (ii) those intervenors who had invested significantly greater amounts of time in the process to date, including preparation for the oral hearing, would be expected to show the

results of such investments in reductions to the amount of time later spent on the tasks included in the final claim.

It is obvious that the termination of this proceeding has prevented the OEB approach that was set forth in the Interim Cost Decision and Order from being implemented. As a result, the OEB has determined that the interim cost awards for all parties where the amount was under the maximum of \$30,000 will be final. FRPO, GEC and Pollution Probe are three intervening parties that filed interim cost claims in excess of the \$30,000 maximum amount. The amounts of the cost claims and the balance in excess of \$30,000 for these three intervenors are summarized below:

Intervenor	Total Fee Claim	Balance in Excess
FRPO	\$59,365.68	\$29,365.68
GEC	\$34,988.41	\$4,988.41

As the proceeding was adjourned, a purely objective assessment of the value of these interventions in assisting the panel is, of course, not feasible. However, the overall reasonableness of the individual claims can be assessed in relation to the OEB expectations for the time required for performance of the tasks set out in the claims. These expectations will govern both the production of evidence that is of assistance to the OEB and the effective participation of the intervening party in the tribunal process.

The OEB finds that the cost claims of GEC and Pollution Probe are reflective of reasonable expectations for the production of evidence and the preparation for the hearing by both lawyers, consultants and experts so engaged. The OEB approves their cost claims and for recovery of amounts in excess of that provided in the interim order herein.

The OEB finds that FRPO's cost claim for 159.2 hours of consultant and witness time is excessive. The OEB recognizes the need to research and obtain information to inform FRPO's proposed evidence. However, the overall amount of time claimed and the lack of a clear division of responsibilities between Dwayne R. Quinn as a consultant, Dwayne R. Quinn as the proposed witness, and Peter C.P. Thompson, also acting in a consulting capacity compels a conclusion that some duplication has occurred. Given that the witness and the chief consultant are one and the same, there also arises an expectation that there would be time saved in relation to the need for witness instruction

and the review of witness evidence drafts. As a result, the OEB will reduce FRPO's over recoverable hours by one-third to 106.6 hours, the reduction allocated pro rata between the claiming individuals.

The OEB will order that Enbridge Gas pay to FRPO, GEC and Pollution Probe the differential between the \$30,000 already paid and the final total cost claims awarded for the proceeding.

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:
 - Federation of Rental-housing Providers of Ontario \$9,751.14
 - Green Energy Coalition \$4,988.41
 - Pollution Probe \$11,429.19
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 January 14, 2021

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar