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Energy
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DECISION AND ORDER ON COST AWARDS

EB-2020-0091

ENBRIDGE GAS INC.

Integrated Resource Planning Proposal

BEFORE: **Lynne Anderson**
Presiding and Chief Commissioner

Susan Frank
Commissioner

Michael Janigan
Commissioner

October 27, 2021

OVERVIEW

This is a decision of the Ontario Energy Board on cost claims filed with respect to an Enbridge Gas Inc. (Enbridge Gas) proceeding, regarding Integrated Resource Planning (IRP).

The OEB granted the following parties intervenor status and cost award eligibility (several additional parties had intervenor status but not cost award eligibility in the proceeding):

- Anwaatin Inc. (Anwaatin)
- Association of Power Producers of Ontario (APPrO)
- Building Owners and Managers Association, Greater Toronto (BOMA)
- Canadian Manufacturers & Exporters (CME)
- Consumers Council of Canada (CCC)
- Energy Probe
- Environmental Defence
- Federation of Rental-housing Providers of Ontario (FRPO)
- Green Energy Coalition (GEC)
- Industrial Gas Users Association (IGUA)
- London Property Management 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 22, 2021, 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 raise any objections to the claims, and for intervenors to respond to any objections raised by Enbridge Gas.

The OEB received cost claims by the due date (August 26, 2021) from Anwaatin, APPrO, BOMA, CME, CCC, Environmental Defence, FRPO, GEC, IGUA, LPMA, LIEN, OGVG, OSEA and Pollution Probe. Energy Probe filed its cost claim on August 28, 2021, SEC on August 30, 2021 and VECC on August 31, 2021. The OEB accepts Energy Probe's, SEC's and VECC's cost claims for consideration notwithstanding the late filing.

Cost Claim Objections

On September 9, 2021, Enbridge Gas filed a letter stating that it had concerns with the cost claims filed by FRPO, GEC, Pollution Probe and SEC. For these four parties, Enbridge Gas submitted that the OEB should consider the claimed costs compared to the cost claims made by other intervenors, and in relation to the unique and incremental value these parties added to the proceeding.

With respect to FRPO's cost claim, Enbridge Gas noted that the OEB had denied FRPO's proposal to prepare and file evidence in this proceeding (to be prepared by Mr. Dwayne Quinn and Mr. Peter Thompson) that would have focused on the natural gas market and flow dynamics in Ontario and the opportunity to make use of supply-side solutions as part of IRP. Despite the fact that the OEB denied FRPO's request to file its proposed evidence, Enbridge Gas noted that FRPO claimed hours for both Mr. Quinn and Mr. Thompson for all aspects of the proceeding.

Enbridge Gas further stated that FRPO's cost claim included consultant work totaling 294 hours (including 98 hours for Mr. Thompson), which is more than twice the average number of hours claimed by other parties (and around three times the average number of hours of parties other than FRPO, GEC, Pollution Probe and SEC). Enbridge Gas submitted that FRPO focused much of its effort on specific supply-side IRP alternatives that did little to assist the OEB in establishing an IRP policy framework for Enbridge Gas.

With respect to GEC's cost claim, Enbridge Gas stated that the costs for GEC and its expert witness, Mr. Chris Neme from the Energy Futures Group ("EFG"), totaled \$160,498 (including \$81,593 for EFG). The cost claim is based on 212 hours spent by GEC counsel, and 247 hours spent by EFG's representative. Enbridge Gas further stated that GEC had previously filed a letter, pursuant to P.O No. 3 indicating that the total cost for the evidence and testimony proposed by EFG was estimated at 154 hours or \$46,980, plus an additional estimate of \$7,500 for GEC/ED counsel to support the additional tasks associated with preparation of evidence. Enbridge Gas noted that, while it accepts that the scope of EFG's participation expanded beyond what was initially contemplated, the actual amounts claimed by GEC are quite high compared to other parties and compared to the initial EFG cost estimate. Enbridge Gas noted that the cost claim for GEC (excluding the claim for EFG) is around twice as much as the average of all other cost claims.

With respect to Pollution Probe's cost claim, Enbridge Gas stated that Pollution Probe filed a cost claim totaling \$78,775, around two and a half times higher than the average

of cost claims when excluding the claims of FRPO, GEC, Pollution Probe and SEC. Enbridge Gas noted that Pollution Probe claimed over 48 hours for interrogatories (the third highest such claim in this proceeding) despite only having filed 12 interrogatories and also claimed the highest amount of hours (93 hours) for oral hearing preparation and attendance.

With respect to SEC's cost claim, Enbridge Gas stated that SEC filed a cost claim totaling \$76,929, around two and a half times higher than the average of cost claims when excluding the claims of FRPO, GEC, PP and SEC. Enbridge Gas stated that SEC declined to file interrogatories for this proceeding, while still claiming almost two times the average hours claimed for interrogatories compared to other intervenors.

Responses to Cost Claim Objections and Clarification Questions

All four parties whose cost claims were questioned by Enbridge Gas filed responses to address Enbridge Gas' comments. Three of these parties (FRPO, GEC and Pollution Probe) also filed responses to clarification questions from OEB staff regarding their time allocations across cost categories.

In response to Enbridge Gas' objection, FRPO noted that it strived to assist the OEB with an understanding of how supply-side alternatives could have great value in avoiding incremental infrastructure, and how the IRP Framework could be developed to ensure the inclusion of supply-side alternatives, and was the only party presenting this perspective. FRPO further noted (in response to a request for clarification from OEB staff) that it had invested hours in the preliminary stages of the proceeding (allocated to pre-hearing conferences) in submitting its views on the need for a comprehensive issues list that incorporated supply-side alternatives, and the potential for FRPO evidence on supply-side alternatives that would be of assistance to the OEB. FRPO also noted that it was reasonable to claim hours for both Mr. Quinn and Mr. Thompson throughout the proceeding, even though FRPO's proposal to file evidence was denied, as both individuals were identified as FRPO's representatives in its original intervention request.

In response to Enbridge Gas' objection, GEC argued that the simple comparison of GEC's counsel hours to the hours of parties that were not sponsoring evidence was not appropriate. GEC noted that sponsoring evidence requires a number of time consuming steps including, assessment of evidence needs, selection of expert, settling report scope, submission of evidence proposal to the OEB, ongoing oversight and feedback on expert efforts, coordination of presentation day presentation, review of incoming interrogatories, review of draft responses to interrogatories, development of evidence-

in-chief, preparation of expert for standing cross, coordination with co-sponsoring parties and parties relying on GEC's lead evidence role throughout, and responding in argument to issues arising from evidence. GEC also noted that its original proposal could not have anticipated some aspects of the proceeding, such as a significant technical conference, presentation days, or the extent of interrogatories submitted regarding EFG's expert evidence.

In response to Enbridge Gas' objection, Pollution Probe argued that some stakeholders were significantly more active in this proceeding and the value and outcomes of the proceeding would have been diminished without their participation. Pollution Probe submitted that the OEB approved Pollution Probe to collect and submit best practice evidence (as appendices to the interrogatory process) in order to ensure that a more fulsome amount of best practices were available. Pollution Probe indicated that it researched, collected and filed eight best practice evidence documents for the hearing that represented local, Canadian and North American best practice elements.

Pollution Probe submitted that Enbridge Gas' letter incorrectly captured the number of questions raised by Pollution Probe through interrogatories. Pollution Probe indicated that it provided over 30 questions to Enbridge Gas alone during the interrogatory process, but grouped these questions by subject to be more efficient. When considering the full interrogatory process, Pollution Probe indicated that it provided 90 questions in total. Pollution Probe submitted that the interrogatory issues it raised resulted in greater clarity and transparency and are directly related to issues impacting the OEB's Decision and Order in this proceeding.

In response to Enbridge Gas' objection, SEC noted that Enbridge Gas' primary complaint was that SEC claimed almost twice the average hours spent by other intervenors on interrogatories in order to avoid filing any of its own. SEC submitted that this statement is misleading because SEC did not claim any hours "to avoid filing" interrogatories. SEC noted that its only claim for interrogatories was to review the responses and its claim for preparation time was zero.

SEC further noted that throughout this process, it realized that many other parties would be reviewing the evidence and asking interrogatories. However, it still had to review the prefiled evidence for other purposes (issues list, presentation day, technical conference, oral hearing, argument), but relied on the questions from other parties as being sufficient for written discovery. SEC indicated its focus was more on the oral discovery, both at the technical conference and in the oral hearing. SEC submitted that its participation was thoughtful and careful, designed to be efficient yet bring a perspective

that would be useful to the OEB, and ultimately provided value that was commensurate with the time spent and costs incurred.

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 recognizes the value that the participation of intervening parties brought to this proceeding. However, in granting cost awards the OEB must be mindful of whether the time spent and costs claimed are commensurate with the value that these interventions provided to the OEB. To that end, the OEB is adopting an approach that includes an initial screening,¹ to assist in determining reasonable limitations for the time spent and costs incurred. The results of that screening for certain claims will then be addressed with a view to making specific adjustments where warranted.

In reviewing the cost claims, and taking into account the nature of the IRP proceeding and the length of various stages, the OEB concludes that an appropriate hourly envelope is comprised of the following:

1. Hours of Attendance (excluding Presentation Day) and including the technical conference and oral hearing: 45 hours
2. Hours for Preparation including issues list involvement, interrogatory questions and review of responses, preparation for the technical conference and oral hearing: 2 x attendance hours = 90 hours
3. Hours for Written Argument: 40 hours
4. Presentation Day: 6.5 hours

Total Hours: 181.5

The OEB has decided that it will approve the cost claims of those intervening parties whose total hours are within the expected envelope. The use of total hours recognizes that there was some variation across parties as to which stage of the proceeding certain activities, such as review of expert reports, were allocated to. There are four claims whose total hours exceed the expected envelope, and the OEB has dealt with each below in considering the overage claimed in excess of the envelope.

¹ This approach was employed in the Toronto-Hydro Electric System Limited rates proceeding (EB-2014-0116).

FRPO

FRPO has claimed for 294 hours of counsel and consultant time, 112.5 hours above the expected envelope. As FRPO noted in its final argument, FRPO's priority focus in this case was to ensure that credible non-facility market based supply-side opportunities are appropriately investigated and evaluated by Enbridge Gas in connection with all of its pending and anticipated need/constraint based requirements. In response to FRPO's proposal to file evidence, the OEB in Procedural Order (P.O.) No. 4 stated that it agreed with FRPO that supply-side alternatives can be pertinent to IRP and have been considered in previous Leave to Construct proceedings. However, the OEB raised concerns whether FRPO's proposed evidence would be relevant to the issues for this proceeding to develop an IRP framework and would not duplicate matters considered in the OEB's review of Enbridge Gas' five-year natural gas supply plan (EB-2019-0137). In P.O. No. 5 the OEB determined that it would not approve FRPO's proposal to file evidence on supply-side opportunities.

The OEB finds no basis to grant the cost claim by FRPO that is significantly higher (almost 50% higher than the next highest intervenor excluding GEC) than all other intervenors except GEC, who filed expert evidence. FRPO's interrogatories and submissions focused on supply side options. Not only did FRPO spend considerable time on a specific supply options, its interrogatories and questioning resulted in higher costs by other parties. The OEB indicated in P.O. No.4 that it was developing a framework for IRP, not identifying alternatives for specific needs.

There are a number of items in the FRPO claim that are excessive. FRPO spent 49 hours on interrogatory preparation with extensive questioning that drove additional costs for other hearing participants. Fewer but more focused questions would have been greater assistance to the OEB. FRPO also spent 68 hours on pre-hearing and other conferences. Typically, intervenors spent less than 20 hours on these activities. However, this time spent appeared to have little effect on reducing the time FRPO spent on interrogatory and argument preparation. As a result, the OEB reduces the allowable total hours to be recovered by FRPO to 181.5 hours.

GEC

The OEB accepted the proposal to file evidence submitted by GEC, on the basis that it would draw from IRP lessons learned in the electricity sector and in the gas sector in jurisdictions other than New York. The OEB indicated that the estimated cost for GEC/ED's evidence appeared to be reasonable at \$46,980, or \$40,380 if no cross-examination or undertakings were required.

Expert Witness

The OEB found the evidence and participation by Mr. Chris Neme from EFG to be beneficial, however the cost submitted of \$81,592.50 for 247.25 hours is considerably above expectations. The OEB understands that the time spent to answer interrogatories was above expectations, given the large number of interrogatories. While the time spent on oral hearing preparation at 135 hours included EFG's evidence preparation, it is far in excess of the original proposal. As well, the time spent at the technical and other conferences is above the amount that would be expected for the expert witness. The OEB will allow an increase of approximately 50% in consideration of the incremental interrogatories and other incremental aspects of the evidence and participation. As a result, a cut of approximately 30 hours rounded to \$10,000 will be made to Mr. Neme's cost claim. The approved costs are \$71,592.50 for Mr. Neme.

Counsel for GEC

Mr. David Poch, GEC's counsel, expended 211.6 hours of time in participating in the proceeding. As counsel, he was responsible for superintending the submission of evidence, interrogatory responses, and presentation of GEC's witness in addition to the overall representation of GEC in the proceeding. The OEB would expect the additional responsibilities for counsel associated with expert evidence would result in an increase in hours of approximately 25% above the hours for representation without expert evidence. Mr. Poch's time is within those expectations; as such, no cost claim reduction will be applied.

Pollution Probe

Pollution Probe's cost claim at \$78,775.13 is the third highest claim. The OEB concludes there was no justification for Pollution Probe claiming hours well beyond the expected envelope. Pollution Probe asked 90 interrogatories, which was in excess of what might be helpful to the OEB. Pollution Probe also engaged in extensive cross-examination at the technical conference and oral hearing (over 160 pages of transcript), which was also likely more than necessary to support its final argument and make its position on the record. Pollution Probe is encouraged to be more focused in its participation at future OEB hearings to avoid the waste of time and costs. While the OEB indicated it was receptive to having on the record any available studies or evidence from other jurisdictions on the approach to IRP, or on IRP for the electricity sector in Ontario, this was not an open-ended invitation to undertake research to gather and assess this evidence that would normally have required pre-approval as expert evidence. The 211.25 hours claimed will be reduced to 181.5 hours.

SEC

SEC's time claimed was 206.3 hours giving rise to a cost claim of \$76,929.27, the fourth highest. There were several issues with SEC's claim. SEC spent 30.5 hours reviewing interrogatories which the OEB concludes is excessive. Also, the time to prepare final argument exceeded the expected maximum time by 14 hours. The OEB found SEC's submission helpful but is reducing the cost claim to 181.5 hours.

Conclusion

The OEB finds that the cost claims of Anwaatin, APPRO, BOMA, CME, CCC, Environmental Defence, Energy Probe, IGUA, LPMA, LIEN, OGVG, OSEA and VECC are reasonable as are the adjusted claims of FRPO, GEC (including the adjusted claim for GEC's expert witness), Pollution Probe and SEC and each of these cost 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.	\$42,628.12
• Association of Power Producers of Ontario	\$17,474.32
• Building Owners and Managers Association, Greater Toronto	\$35,718.06
• Canadian Manufacturers & Exporters	\$17,154.53
• Consumers Council of Canada	\$28,899.75
• Energy Probe	\$39,373.05
• Environmental Defence	\$35,940.22
• Federation of Rental-housing Providers of Ontario	\$67,681.35
• Green Energy Coalition	\$150,498.14
• Industrial Gas Users Association	\$47,009.13
• London Property Management Association	\$33,374.55
• Low-Income Energy Network	\$16,566.93
• Ontario Greenhouse Vegetable Growers	\$28,772.06
• Ontario Sustainable Energy Association	\$32,871.70
• Pollution Probe	\$67,681.35
• School Energy Coalition	\$67,681.35
• Vulnerable Energy Consumers Coalition	\$32,842.44

DATED at Toronto October 27, 2021

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar