



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

DECISION AND ORDER ON COST AWARDS

EB-2023-0313

ENVIRONMENTAL DEFENCE

Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249

BEFORE: **Pankaj Sardana**
Presiding Commissioner

Lynne Anderson
Chief Commissioner

Allison Duff
Commissioner

March 5, 2024

OVERVIEW

This is a decision of the Ontario Energy Board (OEB) on cost claims filed with respect to an amended motion filed by Environmental Defence (ED).

On December 13, 2023, the Decision and Order on Motion to Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249 was issued (Motion Decision). The Motion Decision denied the amended motion and set out the process for cost awards. Cost claims were due no later than January 11, 2024.

The OEB received cost claims from ED, Mohawks of the Bay of Quinte and Pollution Probe.

On January 18, 2024 Enbridge Gas filed its submission on ED's cost claim.

Enbridge Gas recommended that the OEB consider the value of ED's proposed evidence and the scope of ED's interest when reviewing ED's cost claim. Enbridge Gas noted that the original panel's Decision on Intervenor Evidence, issued April 17, 2023, denied ED's request to file the intervenor evidence.

Enbridge Gas also submitted that the OEB should consider ED's inclusion of the Mohawks Bay of Quinte Project in the amended motion and subsequent withdrawal late in the proceeding. Enbridge Gas claimed that ED should be responsible to bear costs incurred by other parties related to the Mohawks of the Bay of Quinte participation prior to ED's withdrawal.

On January 19, 2024, ED replied stating Enbridge Gas's basis for its objections were inaccurate and distorted the facts of the decision. With respect to the value of the proposed evidence, ED noted that although the review panel denied the motion, the review panel did not suggest that it was improper to bring the motion and there was no finding on the disallowance of costs. Further, ED noted that the inclusion of the Mohawks of the Bay of Quinte in the motion was warranted. ED stated that it withdrew the part of the motion based on a request from the Mohawks of the Bay of Quinte. ED opposed Enbridge Gas's submission that ED should be denied costs on the account of other parties incurring costs.

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 finds that the cost claims are reasonable and shall be reimbursed by Enbridge Gas.

Enbridge Gas claimed that the OEB should consider the value of ED's proposed evidence and the scope of ED's interests, which the original panel found to be questionable and beyond the immediate scope of the Community Expansion Projects proceedings.¹

In the Motion Decision, the review panel concluded that ED's motion raised legitimate questions regarding the relevant issue of Enbridge Gas's revenue forecast.

In assessing ED's cost claim in the motion proceeding in which the merits of the motion were addressed, the role of the review panel is not to assess the value of ED's proposed evidence, but to determine whether the original panel erred in not allowing that evidence.

Regarding the scope of ED's interests, the OEB noted that ED's interests included broad issues which extended beyond the immediate scope of these proceedings. The OEB finds that this is different from saying that ED has no interest or insufficient interest in this motion proceeding to obtain costs.²

Lastly, the OEB is not persuaded by Enbridge Gas's position that ED be denied certain costs on the basis that other parties incurred costs related to ED's withdrawal of the Mohawks of the Bay of Quinte part of the motion. The OEB agrees with ED's response to Enbridge Gas's position. The OEB benefits from hearing a variety of perspectives, which may not be possible "if parties are penalized for pursuing perspectives that do not ultimately win the day"³.

For these reasons, the OEB approves the cost claims as filed.

THE ONTARIO ENERGY BOARD ORDERS THAT:

Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Enbridge Gas shall promptly pay the following amounts to the intervenors for their costs:

- | | |
|--------------------------------|------------|
| • Environmental Defence | \$9,236.62 |
| • Mohawks of The Bay of Quinte | \$6,913.00 |
| • Pollution Probe | \$1,398.39 |

¹ EB-2023-0313, OEB Decision and Order (December 13, 2023), page 16

² EB-2023-0313, OEB Decision and Order (December 13, 2023), pages 16-17

³³ Environmental Defence letter, January 19, 2024, p. 3.

DATED at Toronto March 5, 2024

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar