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DECISION AND ORDER ON COST AWARDS

EB-2022-0200

ENBRIDGE GAS INC.

Enbridge Gas Inc. Application for 2024 Rates – Phase 1

BEFORE: **Patrick Moran**
Presiding Commissioner

Allison Duff
Commissioner

Emad Elsayed
Commissioner

June 14, 2024

OVERVIEW

This is a decision of the Ontario Energy Board on cost claims filed with respect to the first phase of Enbridge Gas Inc.'s cost of service rate application for an order approving the rates for natural gas distribution, transportation and storage beginning January 1, 2024 and approval of an incentive rate-making mechanism for the years 2025 to 2028. The OEB granted Enbridge Gas's request to hear the application in multiple phases.

Because of the duration and complexity of the Phase 1 proceeding, the OEB granted cost eligible intervenors the opportunity to file interim cost claims up to June 28, 2023. Environmental Defence, London Property Management Association (LPMA), Quinte Manufacturers Association (QMA) and Vulnerable Energy Consumers Coalition (VECC), indicated their intentions of filing their cost claims at the end of the proceeding while the Ontario Association of Physical Plant Administrators and Otter Creek Co-operative Homes Inc. indicated that they did not intend to file any cost claims. Interim costs were awarded to the following parties:

- Association of Power Producers of Ontario (APPrO)
- Building Owners and Managers Association (BOMA)
- Canadian Biogas Association (CBA)
- Canadian Manufacturers & Exporters (CME)
- Consumers Council of Canada (CCC)
- Energy Probe Research Foundation (EP)
- Federation of Rental-housing Providers of Ontario (FRPO)
- Ginoogaming First Nation (GFN)
- Green Energy Coalition (GEC)
- Industrial Gas Users Association (IGUA)
- Ontario Greenhouse Vegetable Growers (OGVG)
- Pollution Probe
- School Energy Coalition (SEC)
- Three Fires Group Inc.

The OEB issued its Phase 1 Decision and Order on December 21, 2023 and an Interim Rate Order approving 2024 rates on April 11, 2024. On April 16, 2024, the OEB issued Procedural Order No. 8 in which it set out, among other matters, the cost award process. Intervenors were directed to file cost claims for the entirety of Phase 1 and any amount previously received as an interim award would be applied as a credit against the total cost claim in the OEB's final cost award decision.

The OEB received cost claims from APPrO, BOMA, CBA, CCC, CME, Environmental Defence, EP, FRPO, GFN, GEC, IGUA, LPMA, OGVG, Pollution Probe, QMA, SEC, Three Fires Group and VECC.

Cost Claim Objections

In its letter of May 14, 2024, Enbridge Gas raised concerns with the quantum of costs claimed for the first of three phases. The total claimed costs amounted to approximately \$3.7 million, which includes \$0.5 million for expert evidence filed on energy transition, depreciation, and equity thickness. Enbridge Gas also submitted that there was a significant range in the hours and total cost claimed by intervenors and requested that the OEB review the number of hours intervenors claimed for each process step in comparison to the role that they played in the process. Enbridge Gas also noted for certain process steps, intervenors claimed hours well above the average amount of hours claimed. In addition to the hours, Enbridge Gas also claimed that a number of parties did not collaborate and combine their efforts, resulting in duplication and overlap in the interventions. Enbridge Gas further submitted that other than retaining a joint expert, the submissions and interrogatories of Environmental Defence, GEC and Pollution Probe contained substantial crossover and duplication.

Responses to Cost Claim Objections

In its joint reply submission dated May 21, 2024, Environmental Defence and GEC submitted that Enbridge Gas's assertion that the environmental intervenors did not rely on each other for their submissions, questions or work in their areas of interest is inaccurate. The parties noted that where possible, they relied on each other to address certain topic areas in more detail. Environmental Defence noted that for the topics that both intervenors addressed, the requests may have been similar but there were differences in content and style. Environmental Defence and GEC further highlighted that they jointly retained Energy Futures Group, which significantly reduced costs and took a lead role in the energy transition evidence prepared by Guidehouse for Enbridge Gas and coordinated work with other intervenors.

Pollution Probe replied to Enbridge Gas's objections on May 21, 2024, stating that these objections were general in nature with no specific details, references or recommendations and should be dismissed by the OEB. Pollution Probe also stated that the net benefits to ratepayers from Phase 1 significantly exceed the cost as a result of stakeholder participation.

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 approves the cost claims as filed, with the exception of some minor adjustments / corrections which are described at the end of this Decision and Order. The OEB considered the reasonableness of the total hours claimed for the entire proceeding and the hours claimed for each major procedural step in the hearing process for each intervenor. The OEB finds that, given the complexity of Enbridge Gas's application and the direct financial benefit to Enbridge Gas's customers resulting from the intervenors' participation, the total claimed intervenors cost is reasonable.

Enbridge Gas's primary concern was that the total quantum of the cost claims is large. While Enbridge Gas acknowledged the complexity of its application, it did not provide a basis as to why the total claimed costs may be out of line.

The OEB notes that Enbridge Gas's application consisted of several thousand pages of evidence, and it was the first rates application for Enbridge Gas since the OEB approved the amalgamation of Enbridge Gas Distribution Inc. and Union Gas Limited effective January 1, 2019, and the first cost of service application since 2013. The proposed revenue deficiency was \$1.2 billion over the 2024 to 2028 period. The asset management plan proposed by Enbridge Gas included \$7 billion in capital spending over the same period. For any intervenor to review the application, consider the 2019 to 2023 amalgamation accounting issues and understand the integrated proposals for 2024 to 2028, would take considerable time and effort. While the OEB agrees that the number of intervenors was unprecedented, so was the application.

The Phase 1 proceeding, which lasted for more than one year, included a stakeholder conference, an issues conference, a technical conference, a motions day, a settlement conference, extensive expert evidence filings as well as an oral hearing. Cost claims for Phase 1 started with the stakeholder conference on June 13, 2022, and ended when Enbridge Gas filed its Phase 2 evidence on April 26, 2024. The OEB acknowledges that the approved Phase 1 cost claims extend past the Phase 1 decision issuance date and included client briefings on post-decision events, impact and potential implications for Phase 2. The OEB finds this extended time frame to be reasonable given the continuum of hearing this application over three phases. This proceeding was clearly a unique case and it would be impractical, if not impossible, to compare the total cost claims to other cases.

In reviewing the hours claimed by each intervenor for each procedural step in the proceeding, the OEB finds that the steps where most intervenors spent the largest

number of hours were reading and researching the application, attending the technical conference, and attending the settlement conference. The OEB believes that these represented value-added contributions by the intervenors and resulted in a positive outcome for Enbridge Gas's customers.

Enbridge Gas's submission on the cost claims focused on three areas of concern.

1. As described above, Enbridge Gas indicated that it had concerns with the quantum of \$3.6 million in total cost claims, including expert witnesses. The OEB notes that the joint effort by the 23 intervenors participating in the settlement conference resulted in an estimated \$90 million reduction to Enbridge Gas's forecast 2024 revenue deficiency. The \$90 million reduction in 2024, which included a \$50 million reduction to Enbridge Gas's 2024 requested Operation and Maintenance budget, is a direct benefit to Enbridge Gas's 3.2 million customers that is 25 times greater than the total amount of intervenor cost claims. A complete assessment of the benefits to customers in reaching a partial settlement proposal should also include the avoided cost of oral hearing days. The OEB forecast an oral hearing of 11 days longer if no settlement proposal had been filed.

The cost for expert witnesses was \$0.5 million. The topics ranged from energy transition risk to capital structure. The OEB finds this cost award component to be justified as this evidence challenged Enbridge Gas's experts in an open, transparent and inclusive public hearing process.

Intervenors commissioning expert evidence or intervenors focusing on such evidence noted the significant extra work in responding to Enbridge Gas's own expert evidence and subsequent changes to that evidence which resulted in additional procedural steps.

2. Enbridge Gas highlighted the wide range of cost claims among intervenors and the number of claimed hours compared to the average number of hours. Enbridge Gas did not propose intervenor specific reductions. Enbridge Gas also asked the OEB to review the number of hours for each process step in comparison to the role the intervenor played.

It is standard OEB process to review intervenor hours by process step prior to issuing any cost award decision. The OEB considers a wide range in claims to be typical of any case, particularly a large case like this, and it depends on the range of areas covered by each intervenor including expert evidence. Based on their interest and area of expertise, intervenors may address the entire Issues List (41 issues) or focus on very specific subjects with limited scope in the proceeding. In

such a complex proceeding with a relatively large number of intervenors, the OEB would expect that the cost claims and corresponding number of hours would vary amongst intervenors and, as a result, would deviate from the overall average for the intervenors. This spectrum of viewpoints was very helpful to the OEB in reaching its decision.

Intervenors SEC and IGUA claimed the most hours – well above the average of all others. Enbridge Gas acknowledged SEC’s leadership role, yet clearly SEC and IGUA were both leaders among the intervenors. The OEB considered the interim and final cost claims, and the accompanying letters of explanation. Specifically, a detailed review of SEC’s and IGUA’s legal counsel billing dockets from October 2022 to December 2023, indicate daily tasks that demonstrate leadership roles:

- intervenor coordination meetings
- meetings to consider potential expert advisors
- coordination of issues and expert witnesses
- correspondence to identify potential common issues
- discussions formulating proposals to resolve issues
- work plans

The OEB is convinced the Phase 1 proceeding was more focused yet comprehensive, efficient yet thorough, as a result of proactive leadership among intervenors.

3. Enbridge Gas suggested possible duplication and overlap among some intervenors, more specifically Environmental Defence, Green Energy Coalition (GEC) and Pollution Probe. Enbridge Gas made general references in its submission to “substantial crossover and duplication” from these three intervenors without providing specific examples.

Environmental Defence (on behalf of itself and GEC) and Pollution Probe responded to Enbridge Gas’s submission. Each described the steps taken throughout the proceeding to coordinate their activities among themselves and with other parties in order to avoid duplication of submissions and expert evidence. Environmental Defence and Pollution Probe provided several specific examples where potential duplication and overlap was jointly discussed and purposely avoided. Environmental Defence submitted that Enbridge Gas was “not accurate” in asserting that the three environmental intervenors did not rely on each other. Pollution Probe explained that coordination efforts were largely behind the scenes – but evident.

The OEB finds that the submissions filed by Environmental Defence, GEC and Pollution Probe were mostly distinct. Obviously, common issues were addressed, consistent with the Issues List, yet the OEB found differences as well. For example, the three submissions had unique proposals for issue #8 (Revenue Horizon). Also, Environmental Defence addressed numerous issues that were not addressed by GEC or Pollution Probe¹. The OEB agrees with Environmental Defence that the context for each submission was unique as well. For example, GEC focused on the OEB's statutory obligations by which it framed its submission.

In summary, the OEB in Procedural Order No.1 encouraged close collaboration among intervenors. Based on the evidence filed with intervenors cost claims, the OEB is satisfied that coordination among most intervenors occurred, resulting in a hearing that was more focused. The OEB is unable to find specific examples which demonstrate that "intervenors missed the opportunity to collaborate with other parties" as submitted by Enbridge Gas.

Minor Adjustments / Corrections

In reviewing the cost claims, some minor errors, duplications, or ineligible expenses were identified. These were factored in determining the final cost awards and are summarized below.

- BOMA's interim cost claim for its counsel included claimed time of 7.75 hours for work done during June 12-28, 2023. The same claimed time and duration of work is reflected in the current invoice. Since this amount has been previously awarded, the OEB has disallowed 7.75 hours.
- FRPO's cost claim includes a disbursement for a VIA train ticket in business class. In accordance with section 7 on disbursements of the *Practice Direction on Cost Awards*, the OEB allows reasonable disbursements for travel and accommodation as set out in the *Travel, Meal and Hospitality Expenses Directive*. The OEB has adjusted the amount to reflect a train ticket at regular fare.

¹ Environmental Defence letter of May 21, 2024: Issue 11 load forecasting methodologies, Issue 16 site restoration costs and a segregated fund, Issue 32 Volume Variance Account, and Issue 34 Natural Gas Vehicle Program.

THE ONTARIO ENERGY BOARD ORDERS THAT:

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

• APPrO	\$87,500.42
• BOMA	\$23,642.42
• CBA	\$372.90
• CME	\$59,725.02
• CCC	\$86,978.93
• EP	\$74,507.40
• Environmental Defence	\$182,959.43
• FRPO	\$78,982.76
• GFN	\$28,018.00
• GEC	\$94,449.31
• IGUA	\$338,688.27
• LPMA	\$162,845.43
• OGVG	\$51,161.88
• Pollution Probe	\$81,012.53
• QMA	\$32,713.50
• SEC	\$210,949.52
• Three Fires Group	\$79,544.09
• VECC	\$165,498.47

2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Enbridge Gas shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

DATED at Toronto June 14, 2024

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar