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Enbridge Gas Inc.
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April 17, 2025

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, ON M4P 1E4

Dear Nancy Marconi,

**Re: Enbridge Gas Inc. ("Enbridge Gas" or the "Company")
Ontario Energy Board ("OEB") File No. EB-2024-0200
St. Laurent Pipeline Replacement Project
Intervenor Cost Claim Objections**

Pursuant to the OEB's Decision and Order dated March 18, 2025, Enbridge Gas has reviewed the cost claims received from intervenors in the above-noted proceeding and provides these submissions in response.

Enbridge Gas does not object to the cost claims submitted by Environmental Defence (ED), Energy Probe (EP), Industrial Gas Users Association (IGUA), or School Energy Coalition (SEC), which range from just under \$8,000 to just under \$20,000 (inclusive of HST). However, Enbridge Gas objects to the cost claims submitted by Pollution Probe (PP)/Community Association for Environmental Sustainability (CAFES Ottawa or CO), who were jointly represented by the same consultant (Mr. Brophy), and by Federation of Rental-housing Providers of Ontario (FRPO). These claims by PP/CO (combined) and FRPO were each over \$42,000, more than double any other intervenor. In the circumstances, their claims are unreasonably high, particularly given their limited areas of focus and their conduct during the proceeding, which included time spent on points that were not probative or useful for the OEB in adjudicating the application. For reasons described below, Enbridge Gas submits that the approved cost claims of PP/CO (combined) and FRPO should be \$16,767 each (and certainly no greater than \$20,000 for either of them).

A summary of the cost claims submitted is provided in Table 1.

**Table 1: Cost Claims – Amounts Submitted by Intervenors
(including HST)**

Intervenor	Discovery	Procedural	Intervenor Evidence	Written Argument	Decision	Other	Total
	\$	\$	\$	\$	\$	\$	\$
IGUA	4,623.96	1,342.44	0	1,454.31	447.48	0	7,868.19
EP	9,489.15	0	0	3,865.95	702.90	0	14,058.00
ED	8,261.43	0	989.88	7,004.87	0	0	16,256.18
SEC	12,354.30	1,015.87	0	6,205.96	411.32	0	19,987.45
PP	19,390.81	0	1,584.83	5,593.50	0	0	26,569.14
CO	<u>11,280.23</u>	<u>0</u>	<u>0</u>	<u>4,847.70</u>	<u>0</u>	<u>0</u>	<u>16,127.93</u>
PP/CO (combined)	30,671.04	0	1,584.83	10,441.20	0	0	42,697.07
FRPO	29,459.10	6,339.30	0	9,322.50	0	1,118.70	46,239.60

PP/CO's claims

The cost claims submitted by Mr. Brophy on behalf of PP and CO fail to reflect efficiencies that should have resulted from these parties being jointly represented by the same consultant, including in respect of the discovery and argument phases of the proceeding. Also, these claims include time devoted to PP/CO asserting (and seeking to rely on) many factual errors and misleading statements for which these parties and their consultant should not be compensated, as well as time incurred seeking to adduce irrelevant or not properly qualified evidence which the OEB denied. These cost claims submitted by Mr. Brophy are a continuation of a recent pattern of submitting claims on behalf of PP, in a number of other LTC applications, which the OEB has repeatedly found to be unreasonably high -- claims that are out of line with the claims of other intervenors, and that the OEB has significantly reduced, by 50% in a number of instances.¹

In CO's intervention request letter dated July 31, 2024, CO representative Angela Keller-Herzog indicates that "CAFES Ottawa has been in contact with Pollution Probe and intends to coordinate where practical with Pollution Probe. Michael Brophy is providing consulting support to promote efficiency and reduce overall costs."²

On this basis, the individual cost claims of PP and CO should reflect efficiencies and reduced overall costs. In fact, the opposite appears to be true. CO's individual cost claim was itself in line with the average cost claim of a number of other intervenors (excluding the anomalous claim from FRPO), and PP's individual cost claim was itself significantly higher than average. Combined, PP and CO's "coordinated" intervention cost claim of \$42,697 was more than double that of the next highest cost claim (SEC at \$19,987), with the exception of FRPO's outlier claim.

¹ See the OEB's decisions on cost awards in EB-2022-0111, EB-2023-0261, EB-2023-0201 and EB-2023-0200.

² <https://www.rds.oeb.ca/CMWebDrawer/Record/860582/File/document>

Two clear examples of cost categories where one should see evidence of efficiencies resulting from PP/CO's use of a single consultant would be in the review of the application and evidence (as one individual would not need to read the evidence twice), and in the preparation of a single written argument (instead of two). PP/CO's combined claims in these categories were 17 hours for application/evidence review vs. an average of 4 hours for all other intervenors, and 28 hours for written argument vs. an average of 13.5 hours for all other intervenors. These two variances alone resulted in additional cost claims of over \$10,000 for PP/CO.³

In respect of the discovery phase of the application alone, PP/CO's combined claim totals over \$30,000, which is unreasonably high and does not reflect efficiency. With the exception of FRPO's claim (which we address further below), this claim for this phase is multiples higher than the other intervenors. ED, EP, and IGUA were all below \$10,000 for this phase, and SEC was just over \$12,000.

While Enbridge Gas recognizes that claimed amounts by different intervenors are not required to be the same, past OEB decisions show that a relative comparison of the claims of various intervenors is relevant when considering whether particular intervenor's cost claims are reasonable, particularly in respect of intervenors advancing a request for a like result (which is the case in respect of a number of the above intervenors in this application).⁴

The efforts of PP/CO, to a significant degree, did not result in meaningful and probative advances in discovery, evidence or argument in this proceeding. As was addressed in detail in Enbridge Gas's reply closing argument, PP/CO's participation and submissions in this proceeding contained many factual errors and misleading statements, and irrelevant or unnecessary requests that contributed to delays. This resulted in wasted time and resources addressing these points, which distracted from the more relevant and probative points and issues in the case. While there are too many to itemize here, the following are just a few examples:

- In Exhibit I.1-CAFES Ottawa-14 and then again during day 2 of the technical conference⁵, Mr. Brophy (on behalf of CO) persistently misquoted an Enbridge Gas spokesperson as saying "the existing St. Laurent pipeline does not need to be replaced in an urgent manner" when the referenced document clearly said "this does need to be replaced immediately, just due to it being in operation for over 60 years."
- In their Dec 17, 2024 letter⁶, PP relies on an incorrect recollection of the EB-2020-0293 proceeding as a basis for their assertion that an oral hearing is "typically done" for leave to construct projects of this significance. In fact, there was no oral hearing in that proceeding, as outlined by the OEB in PO No. 6 in this proceeding: "Contrary to Pollution Probe's assertion that the "oral hearing component was correctly an important element for the same project proposal in EB-2020-0293", there was no oral hearing in that proceeding. While not determinative of the requests for an oral hearing in the current proceeding, it is important that the facts around that proceeding are accurately stated. The OEB rejected the oral hearing requests made by Pollution Probe and other intervenors, for the reasons set out in

³ Review application/evidence: [(17 hrs x \$330) - (4.4 hrs x \$330)] *1.13 = \$4699

Written argument: [(28 hrs x \$330) - (13.5 hrs x \$330)] *1.13 = \$5407

⁴ For example, see OEB Decision and Order on Cost Awards for EB-2022-0111 and EB-2023-0200.

⁵ Tr Vol 2, pp 51-53.

⁶ <https://www.rds.oeb.ca/CMWebDrawer/Record/876331/File/document>

Procedural Order No. 5 in that proceeding. There was an oral component, but it was the transcribed technical conference.”⁷

- PP’s repeated requests for an early draft of the DNV report through the technical conference and in multiple letters afterwards which consumed a month⁸ of procedural timeline. Enbridge Gas repeatedly explained why the early draft was irrelevant, a position with which the OEB agreed: in PO No. 5, the OEB concluded that “the OEB does not consider it necessary or helpful in this case to require the release of a preliminary incomplete early draft version of the report.”⁹
- In their closing submissions, and despite the extensive time they incurred on the application, PP/CO made many factual errors and misleading statements, 31 of which were itemized in Appendix 1 of Enbridge Gas’s reply argument. These included, for instance, that PP/CO asserted that “this project has been put forward for OEB consideration solely based on the SLP age and forecasted condition” and suggested this was the same basis as was put forward in the previous SLP application¹⁰ – when that assertion was clearly and demonstrably false, and ignored the main evidence in the application.

Further, in PO No. 1, the OEB indicated that it “will consider whether cost eligible intervenors made reasonable efforts to avoid duplication and to ensure that their participation in the hearing was focused on material issues. When submitting their cost claims, CAFES Ottawa, Pollution Probe, and ED, who all have indicated they intend to pursue environmental-related issues in this proceeding, should explain how they coordinated efforts, or if not, why that was not appropriate in their view.”¹¹

PP/CO have not met this standard required by the OEB. Their cost claims show no evidence of avoiding duplicative effort or achieving efficiencies, nor have they explained how they coordinated their efforts on environmental related issues with ED (and we note very similar themes were explored throughout the proceeding by each party) or why that was not appropriate to do so in their view. Intervenor coordination, collaboration and focusing on material issues, with a view to an efficient process and reimbursement of “prudently incurred” costs, has been a longstanding expectation of the OEB.¹²

Based on the concerns raised above, Enbridge Gas submits that a significant reduction in the cost claims submitted by Mr. Brophy on behalf of PP and CO is warranted. Specifically, Enbridge Gas suggests that the approved combined PP/CO costs claims should be \$16,767, representing the average claim of SEC, ED and EP (intervenors who participated throughout all phases of the

⁷ <https://www.rds.oeb.ca/CMWebDrawer/Record/878149/File/document>

⁸ A total of 32 days from Nov 14, 2024 (Submission of undertaking responses from Day 1 of technical conference) to Dec 16, 2025 (OEB issues PO No. 5 containing the OEB’s findings on PP’s (and FRPO’s) requests for additional information).

⁹ <https://www.rds.oeb.ca/CMWebDrawer/Record/876151/File/document>

¹⁰ PP/CO closing submissions dated January 24, 2025, p. 19.

¹¹ <https://www.rds.oeb.ca/CMWebDrawer/Record/862471/File/document>

¹² OEB Practice Direction on Cost Awards (April 1, 2023), Section 5.01, p. 6

<https://www.oeb.ca/sites/default/files/uploads/documents/regulatorycodes/2025-01/Practice-Direction-on-Cost-Awards-20230401.pdf>; and

OEB Report Back to the Minister – Intervenors and Regulatory Efficiency (Sept 27, 2024), p. 3

<https://www.rds.oeb.ca/CMWebDrawer/Record/881075/File/document>.

application and whose claims are in the reasonable range)¹³ – with the individual approved amounts for PP and CO being \$10,434 and \$6,333, respectively. This would represent approximately a 61% reduction, which we submit is reasonable in the circumstances, and is only approximately \$3,000 lower than the high end of the range for all other intervenors, with the exception of FRPO (the next highest intervenor cost claim is SEC's, at \$19,987).

FRPO's Claim

FRPO's cost claim of \$46,239.60 is excessively high, relative to the cost claims of other intervenors and to the probative value of their contribution to the proceeding. Other than PP/CO, in every cost category FRPO's claims were by far the highest; in some cases by multiples:

- 124 hours in total, compared to an average of 53 hours for others;
- 25 hours on interrogatory preparation and review, compared to an average of 10.4 hours for others; and
- 25.5 hours on technical conference preparation, compared to an average of 6.6 hours for others.

Besides the obvious disparity in total hours claimed by FRPO as compared to other intervenors, Enbridge Gas has a number of concerns regarding the time incurred for which FRPO claims cost reimbursement.

First, FRPO's focus in this proceeding was almost entirely on technical details related to the need and alternatives to the Project. While the review of certain technical matters may justify a small amount of additional time as compared to other points in the proceeding, FRPO acknowledges their own limitations in understanding various technical points in their own closing submissions.¹⁴ Ratepayers should not be expected to compensate an intervenor for all time spent in this regard in reviewing technical documents.

Second, despite the fact that the EB-2024-0200 proceeding was a new and stand-alone LTC application, FRPO's cost claim shows that FRPO repeatedly relied on and referred to the previous St. Laurent proceeding (EB-2020-0293) evidence and record to inform and base their intervention in the current case. This resulted in some portion of 14.5 hours or \$5,407 in cost claims¹⁵ related to a 4 year old case that was not the basis for the proposals or the evidence contained within the current application.

Third, a material amount of FRPO's time and focus was devoted to a particular technical issue that was of limited, if any, actual probative value in the proceeding, and resulted in valuable time and resources being used to respond to repeated requests by FRPO seeking additional undertaking responses and information. Specifically, FRPO's technical issue of concern in this regard was whether a small section of pipe could be downsized from NPS 16 to NPS 12. The estimated cost savings – if this downsizing were even feasible – would only be \$1.3 million, an immaterial amount

¹³ We have not factored in IGUA's lower claim in calculating this average, since IGUA did not participate as fully in all phases of the application.

¹⁴ FRPO Submissions p. 3 "while FRPO's expertise does not allow a thorough critical assessment of the [QRA] document..." and p. 5 "Recognizing our limitations with expertise in all elements of risk assessment..."

¹⁵ See FRPO's detailed invoice at dates 2024-09-03, 2024-09-07, 2024-10-19, and 2024-11-25.

in the context of this \$208 million project, and not something that was probative to the OEB determining if this project was in the public interest.¹⁶

In respect of this specific technical point, FRPO made multiple iterations of inquiry during December 2024 in pursuit of “more fulsome responses” to undertakings from Day 1 of the technical conference.¹⁷ Enbridge Gas’s responses to these queries largely repeated its original responses provided during the technical conference. In the case of one specific query in respect of Exhibit JT1.20, Enbridge Gas maintained its position that the requested information is not relevant to matters at issue in this proceeding. The OEB, in PO No. 5, accepted Enbridge Gas’s position, was satisfied with its responses and agreed that the Company’s refusal to respond to JT1.20 was acceptable. FRPO’s continued pursuit of this point resulted in unnecessary procedural delay.¹⁸ FRPO’s costs associated with analyzing undertaking responses and preparing these additional inquiries and requests appear to amount to \$7,831 (or at least a significant portion of this cost item), besides the time FRPO spent on interrogatories and at the technical conference relating to this point.¹⁹

In light of FRPO’s relatively narrow areas of focus in this proceeding, the limited materiality of points on which they focused (and associated procedural delays caused by their pursuit), and that their cost claim and time incurred is so much higher than and out of proportion to all other intervenors (except PP/CO), Enbridge Gas submits that FRPO’s claim should be reduced substantially. FRPO’s approved claim should be in line with the average of the other intervenors who submitted claims in the reasonable range, i.e. \$16,767.²⁰ This would represent approximately a 64% reduction, which we submit is reasonable in the circumstances.

Conclusion

For the reasons described above, and consistent with the objectives of regulatory efficiency and appropriate intervenor participation and cost recovery – for which intervenors receive reimbursement for efficient, coordinated participation and prudently incurred costs – Enbridge Gas respectfully submits that the approved PP/CO (combined) and FRPO’s costs claims should each be reduced to \$16,767 (individual amounts for PP and CO being reduced to \$10,434 and \$6,333, respectively), and that certainly neither of their approved claims should exceed \$20,000, which is the high end of the other intervenors’ claims. The costs claims PP/CO and FRPO submitted are unreasonably high in the circumstances, disproportionate to their contributions in the proceeding, and outliers compared to all other intervenors’ claims. Also, as noted, the claims submitted by Mr. Brophy on behalf of PP/CO is a continuation of a pattern of excessive claims, which the OEB should not condone.

¹⁶ EGI’s letters dated Dec 6, 2024 and Dec 13, 2024.

¹⁷ FRPO’s letters dated Nov 29, 2024 and Dec 12, 2024.

¹⁸ A total of 32 days from Nov 14, 2024 (Submission of undertaking responses from Day 1 of technical conference) to Dec 16, 2024 (OEB issues PO No. 5 containing the OEB’s findings on FRPO (and PP’s) requests for additional information).

¹⁹ See FRPO’s detailed invoice at dates 2024-11-20, 2024-11-22, 2024-11-25, 2024-11-26, 2024-11-27, 2024-11-28, 2024-12-07, 2024-12-10, and 2024-12-12.

²⁰ As noted above, this average amount excludes the lower claim of IGUA given that it did not fully participate in all phases of the application to the extent of the other intervenors.

Sincerely,

Patricia Squires

Patricia Squires
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Cc: Zora Crnojacki (OEB Staff)
Charles Keizer (Torys)
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Intervenors (EB-2024-0200)