



Ontario  
Energy  
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# **DECISION AND ORDER ON COST AWARDS**

## **EB-2024-0200**

### **ENBRIDGE GAS INC.**

**Application for St. Laurent Replacement Project**

**BEFORE:** **Allison Duff**  
Presiding Commissioner

**Emad Elsayed**  
Commissioner

**Anthony Zlahtic**  
Commissioner

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**May 27, 2025**

## OVERVIEW

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on June 17, 2024, under sections 90 and 97 of the *Ontario Energy Board Act, 1998*, for an order granting leave to construct approximately 17.6 kilometers of natural gas pipeline and associated facilities along St. Laurent Boulevard, Sandridge Road and Tremblay Road in the City of Ottawa (St. Laurent Pipeline Replacement or Project).

The OEB granted the Community Association for Environmental Sustainability (CAFES Ottawa), Environmental Defence Canada (Environmental Defence), Energy Probe Research Foundation (EP), Federation of Rental-housing Providers of Ontario (FRPO), Industrial Gas Users Association (IGUA), Pollution Probe and School Energy Coalition (SEC) intervenor status and cost award eligibility.

On March 18, 2025, the OEB issued its Decision and Order approving the Project and setting out the process for cost claims.

The OEB received cost claims from CAFES Ottawa, Environmental Defence, EP, FRPO, IGUA, Pollution Probe, and SEC.

### Enbridge Gas's Objection

Enbridge Gas did not object to the cost claims from Environmental Defence, EP, IGUA, and SEC, each less than \$20,000 including HST. Enbridge Gas objected to the "unreasonably high" cost claims from Pollution Probe, CAFES Ottawa and FRPO. The combined claim of Pollution Probe and CAFES Ottawa (both represented by the same consultant, Mr. Brophy) as well the claim by FRPO are each over \$42,000, which is more than double the highest claim of the other intervenors.

Enbridge Gas argued that the combined claims from Pollution Probe and CAFES Ottawa did not show efficiencies that should be expected from joint representation. There were also concerns about the relevance and accuracy of the points raised by Pollution Probe/CAFES Ottawa, which contained factual errors and misleading statements and irrelevant or unqualified evidence, which contributed to delays.

Similarly, Enbridge Gas submitted that FRPO's claim was an excessively high "outlier" at over \$46,000. Enbridge Gas highlighted that FRPO's 124 hours of billed time was disproportionately high compared to an average of 53 hours for other intervenors. Enbridge Gas noted that FRPO focused on a narrow technical issue of limited, if any, probative value worth \$1.3 million in the context of a \$208 million Project. Enbridge Gas claimed that procedural delays resulted from FRPO's multiple requests for additional information related to certain technical issues, for which FRPO claimed

\$7,831. Additionally, FRPO's claims included time for reviewing outdated evidence from the previous St. Laurent proceeding<sup>1</sup>, which was not relevant to the current case.

Enbridge Gas suggested that the OEB reduce the combined cost claims of Pollution Probe and CAFES Ottawa and the cost claim of FRPO to \$16,767 each, which represents the average reasonable cost claims of other intervenors and should not exceed \$20,000. This reduction, in Enbridge Gas's view, reflects the expectation for efficiency, coordination, and material contribution from intervenors seeking cost recovery in regulatory proceedings.

### **Pollution Probe Response to Enbridge Gas's Cost Claim Objection**

Pollution Probe maintained that the time it spent to efficiently coordinate its participation with CAFES Ottawa and with other parties, warrants an award of costs as claimed. Pollution Probe highlighted its leadership in collaborative efforts to avoid duplication and enhance the overall efficiency of the proceeding and the heterogeneity of specific details underpinning each specific cost claim. Pollution Probe also noted its leadership in the analysis of certain issues during the proceeding.

Pollution Probe disputed Enbridge Gas's arguments about the inefficiencies or inaccuracies in its participation and provided detailed justifications of its cost claim and comparisons to previous similar projects heard by the OEB. Pollution Probe acknowledged a minor error in a procedural submission but said that it did not impact its overall claim.

Pollution Probe submitted that the proposed pipeline was through a busy downtown core with environmental and socio-economic features. It was part of a broader system feeding Ontario and Quebec with options and alternatives put forward by Enbridge Gas and other stakeholders that were complex in detail. Even the economic analysis provided for comparing alternatives included large amounts of assumptions and multiple spreadsheets.

Pollution Probe objected to Enbridge Gas's suggestion that the OEB combine Pollution Probe and CAFES Ottawa costs and compare the combined costs to other intervenors. Pollution Probe described such comparisons as misleading and suggested that each of the Pollution Probe and CAFES Ottawa cost claims should be assessed separately on their individual merit.

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<sup>1</sup> EB-2020-0293

**CAFES Ottawa Response to Enbridge Gas's Cost Claim Objection**

CAFES Ottawa disagreed with Enbridge Gas's objections to its cost claim. CAFES Ottawa argued that Enbridge Gas's high-level statements, subjective opinion and unsubstantiated proposed adjustments was a serious issue that demanded detailed facts and logical analysis.

CAFES Ottawa highlighted its independent status as an intervenor, separate from Pollution Probe, and pointed to coordination with Pollution Probe during the proceeding. To consider CAFES Ottawa as just an environmental organization would be inaccurate and misleading as CAFES Ottawa stated that it represented the interests of its constituents which include ratepayers in the City of Ottawa.

CAFES Ottawa argued that sharing a consultant with Pollution Probe led to cost efficiencies and practical coordination, contrary to Enbridge Gas's submissions on the lack of collaboration and efficiency. CAFES Ottawa explained that more coordination takes more time, and although a consolidated final argument with Pollution Probe was a difficult process, it reduced overall reading and consideration time for the OEB and all parties involved in this proceeding.

Further, CAFES Ottawa disagreed with Enbridge Gas's suggestion that factual inaccuracies or misleading statements were made during the proceeding and considered it a serious and false accusation. Pollution Probe highlighted 246 footnotes in the consolidated Pollution Probe/CAFES Ottawa final argument, describing it as among the most comprehensive and factually documented submissions.

**FRPO Response to Cost Claim Objection**

In response to Enbridge Gas's objections, FRPO highlighted the importance of and the time it spent on detailed and technical review of the evidence. FRPO emphasized that the review of this technically complex application was crucial, considering the potential impacts on ratepayers for years to come. FRPO claimed it was judicious in its involvement in OEB proceedings and has been an active intervenor since 2008.

FRPO argued that it thoroughly reviewed Enbridge Gas's technical evidence to test the need and alternatives for the Project. FRPO claimed that Enbridge Gas's assertions that minimized the nature of the technical evidence did not withstand scrutiny. Moreover, FRPO asserted that its technical expertise was necessary for understanding and challenging the modern inspection technologies Enbridge Gas applied to support the need for the full pipeline replacement.

FRPO also noted that it explored Integrated Resource Planning alternatives including demand-side and supply-side options to reduce the risk of stranded assets.

In response to Enbridge Gas's suggested cost award reduction, FRPO argued that its unique efforts and technical analysis justified the claimed time and cost.

## Findings

The OEB has reviewed the claims filed to ensure that they are compliant with the OEB's *Practice Direction on Cost Awards* (Practice Direction).

The OEB finds that the cost claims of Environmental Defence, EP, IGUA and SEC are reasonable and are approved as filed. The OEB finds that the cost claims of Pollution Probe, CAFES Ottawa and FRPO are not reasonable based on the "Considerations in Awarding Costs"<sup>2</sup> set out in the Practice Direction. In arriving at its findings, the OEB scrutinized the hours claimed by cost category as discussed below.

### Pollution Probe and CAFES Ottawa

Although Pollution Probe and CAFES Ottawa submitted separate cost claims, for the purpose of this Decision, these cost claims have been considered in total as a combined claim. The OEB finds that on a combined basis, the hours claimed for discovery and written submissions to be excessive. The combined cost claim of Pollution Probe and CAFES Ottawa is reduced from \$42,697 to \$16,370 (\$10,180 for Pollution Probe and \$6,190 for CAFES Ottawa).

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<sup>2</sup> See section 5, Considerations in Awarding Costs of the Practice Direction on Cost Awards, April 1, 2023.

**Table 1: Pollution Probe and CAFES Ottawa  
Hours and Cost: Claimed and Awarded**

	<b>Hours Claimed</b>	<b>Cost Claimed</b>	<b>Hours Awarded</b>	<b>Cost Awarded</b>
<b>Pollution Probe</b>	71.25	\$26,569	27.30	\$10,180.18
<b>CAFES Ottawa</b>	43.25	\$16,127	16.60	\$6,190.14
<b>TOTAL</b>	114.5	\$42,696	43.90	\$16,370.32

In its intervenor request letter, CAFES Ottawa stated:

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. CAFES Ottawa may submit materials during the proceeding or where possible consolidate those activities with Pollution Probe. Providing CAFES Ottawa intervenor status provides the ability to accommodate this.

Both Pollution Probe and CAFES Ottawa were represented by the same consultant (Mr. Brophy). Mr. Brophy attended the technical conference and submitted interrogatories on behalf of both intervenors. Even the final submission document in this proceeding was a single consolidated document filed by Mr. Brophy on behalf of both Pollution Probe and CAFES Ottawa. There is no documentation on the record that distinguishes the scope of Pollution Probe's intervention from that of CAFES Ottawa. The CAFES Ottawa intervention request described the scope of the combined intervention, while Pollution Probe's intervention request did not provide any information on the scope of its intervention.

Section 5.01 of the Practice Direction sets out various considerations in awarding costs. It provides, in part:

5.01 In determining the amount of a cost award to a party, the Board may consider, amongst other things, whether the party has demonstrated through its participation and documented in its cost claim that it has:

- (c) made reasonable efforts to combine its intervention with that of one or more similarly interested parties, and to co-operate with all other parties

Based on the objective of “promoting efficiency and reducing overall costs” as stated by CAFES Ottawa, the OEB finds no justification for the combined cost claim of Pollution Probe and CAFES Ottawa to be more than double the next highest cost claim (SEC at \$19,987), excluding FRPO’s cost claim which is addressed later in this Decision. Also excluding FRPO’s cost claim, Pollution Probe/CAFES Ottawa combined claim is approximately three times the average cost claim of the other intervenors.

If one looks at the Pollution Probe cost claim alone at \$26,569 (i.e., without the CAFES Ottawa claim), it is still at least 30% higher than any of the other cost claims, excluding FRPO. Again, the OEB does not see any justification for this based on the Pollution Probe’s contribution to this proceeding relative to other intervenors.

Similarly, considering the cost claim of CAFES Ottawa alone at \$16,128, it is approximately the same as the average of the cost claims of EP, Environmental Defence and SEC (\$16,767). This does not demonstrate a tangible benefit of CAFES Ottawa coordinating with the same consultant as Pollution Probe “to promote efficiency and reduce overall costs”.

The OEB does not accept the argument by CAFES Ottawa in its response to Enbridge Gas’s objection that “enhanced coordination takes incremental time”. The OEB’s objective of encouraging coordination among parties in a proceeding is primarily to minimize duplication, improve efficiency, and reduce cost - not to increase them.

Effective coordination is one aspect the OEB considers in awarding costs. The OEB also assesses the value of the intervenor’s participation in helping the panel to understand the issues, examine the evidence, consider proposals and ultimately render a decision. In assessing value, the OEB finds that the participation and submissions of Pollution Probe and CAFES Ottawa was of limited value in assisting the OEB with reaching its Decision in this proceeding.

Further, the OEB expects a consultant with 28 years of relevant experience to proficiently review the application, develop interrogatories and draft submissions, whether on behalf of one or multiple clients. Accuracy is another OEB expectation. Enbridge Gas’s reply submission included a list of 31 alleged “factual errors and misleading statements” made by Pollution Probe and CAFES Ottawa during the proceeding. Whether Enbridge Gas characterized all 31 items accurately is debatable. However, the OEB accepts that a sufficient number of items are valid, and sufficient to raise questions regarding the overall value of Pollution Probe and CAFES Ottawa’s participation in this proceeding.

The OEB also does not accept Pollution Probe's premise in its response to Enbridge Gas's objection that additional cost can be caused by working on "a number of important OEB proceedings occurring in parallel". Working on multiple proceedings at the same time is common for most intervenors and internal resourcing issues should not result in incremental cost. Pollution Probe's response also does not provide reasons for its cost claim being significantly higher than any other intervenor (except FRPO).

The OEB finds that reducing the total cost claim of Pollution Probe and CAFES Ottawa to \$16,370 is reasonable and consistent with the contribution of these two parties to the proceeding relative to other parties. The total amount awarded approximates the \$16,767 average of the cost award to EP, Environmental Defence, and SEC. FRPO is excluded from this calculation for the reasons provided in the next section and IGUA is excluded because it did not participate fully in all phases of the proceeding. The approved \$16,370 total for Pollution Probe and CAFES Ottawa is then allocated in proportion to the filed cost claims (\$10,180 for Pollution Probe and \$6,190 for CAFES Ottawa).

## FRPO

The OEB finds that FRPO's cost claim of \$46,240 has not been justified and is reduced to \$20,882. The OEB finds that FRPO's claimed hours for discovery, procedural matters and written submission to be excessive relative to other intervenors and probative materiality value of issues pursued for the reasons set out below.

**Table 2: FRPO Hours and Cost Claimed and Awarded**

	<b>Hours Claimed</b>	<b>Cost Claimed</b>	<b>Hours Awarded</b>	<b>Cost Awarded</b>
<b>FRPO</b>	124	\$46,240	56	\$20,882.40

FRPO's claim of \$46,240 is not only significantly higher than any of the other claims, but also more than double the next highest claim (SEC at \$19,987). For the discovery phase of the proceeding alone, FRPO's claim (\$29,459) is more than three times the average of the other intervenors, excluding Pollution Probe/CAFES Ottawa. The OEB finds that this not supported by FRPO's contribution to this proceeding.

The OEB agrees with FRPO's argument, in its reply to Enbridge Gas's objection, that FRPO's assistance in technical matters related to natural gas applications in general has been helpful. However, FRPO's reply does not provide strong reasons for its claim being significantly higher than any of the other intervenor cost claims in this proceeding.



The OEB finds that a significant portion of FRPO's focus in this proceeding dealt with issues related to downsizing a small section of the Project which represented less than 1% of the Project cost. To support its proposal, FRPO filed multiple letters after the technical conference, requesting more information and an oral hearing. The OEB issued two procedural orders in response<sup>3</sup> denying both requests, the effect of which was a delay of the hearing schedule and an increase in cost.

The OEB also does not accept FRPO's argument that cost comparisons "disregard the process" and the "reality of efforts". The OEB uses hours/cost claim comparisons when assessing value and helpfulness. Cost awards are based on value and helpfulness – not effort. The amount of effort is a choice made by each intervenor.

FRPO's award of \$20,882 is higher than the average of the cost awards for Environmental Defence, EP, and SEC and reflects the relevant technical matters that were of assistance to the OEB in rendering its Decision.

#### 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:

• CAFES Ottawa	\$6,190.14
• Environmental Defence Canada	\$16,256.18
• Energy Probe Research Foundation	\$14,058.00
• Federation of Rental-housing Providers of Ontario	\$20,882.40
• Industrial Gas Users Association	\$7,868.19
• Pollution Probe	\$10,180.18
• School Energy Coalition	\$19,987.45

**DATED** at Toronto May 27, 2025

**ONTARIO ENERGY BOARD**

Ritchie Murray  
Acting Registrar

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<sup>3</sup> Procedural Order No. 5 and Procedural Order No. 6