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DECISION AND ORDER ON COST AWARDS

EB-2024-0186

EB-2024-0197

ENVIRONMENTAL DEFENCE CANADA INC.

**FEDERATION OF RENTAL-HOUSING PROVIDERS
OF ONTARIO**

**MOTIONS TO REVIEW AND VARY OEB DECISIONS IN EB-2022-
0111/EB-2023-0200/EB-2023-0201/EB-2023-0261**

BEFORE: **Fred Cass**
Presiding Commissioner

Pankaj Sardana
Commissioner

Anthony Zlahtic
Commissioner

June 2, 2025

OVERVIEW

In May and July of 2024, the OEB issued four decisions and orders (Final Decisions) in which it granted Enbridge Gas Inc. (Enbridge Gas) leave to construct four natural gas expansion projects in the communities of Bobcaygeon, Sandford, Neustadt, and Eganville (collectively the NGEP projects).¹ The projects were identified in Phase 2 of the Province of Ontario's Natural Gas Expansion Program (NGEP) and would provide natural gas distribution to the four communities.

On May 27, 2024, the Federation of Rental-housing Providers of Ontario (FRPO) filed a Notice of Motion with the OEB to review a portion of the OEB's Final Decision in the Bobcaygeon proceeding that granted leave to construct a reinforcement pipeline that forms part of the larger Bobcaygeon project. The OEB assigned file number EB-2024-0186 to the motion.

On June 3, 2024, and July 4, 2024, Environmental Defence Canada Inc. (Environmental Defence) filed a Notice of Motion to review the OEB's decisions on evidence and further discovery (Decisions on Evidence) and the OEB's Final Decisions on the NGEP projects. The OEB assigned file number EB-2024-0197 to the motion.

On July 22, 2024, the OEB issued a Notice of Hearing and Procedural Order No. 1 stating that it would combine the hearing of the FRPO and Environmental Defence motions, pursuant to section 21(5) of the *Ontario Energy Board Act, 1998*. The OEB stated that intervenors in each of the proceedings for the NGEP projects were approved as intervenors in this motion proceeding. The OEB also stated that intervenors that were eligible for costs in those proceedings were also eligible for costs in the motion proceeding. The OEB determined that Enbridge Gas would be liable for any approved intervenor costs.

On April 1, 2025, the OEB issued a decision and order on the Environmental Defence and FRPO motions. As part of its decision and order, the OEB set out the process for cost awards.

The OEB received cost claims from Environmental Defence and FRPO.

On April 28, 2025, Enbridge Gas filed an objection to the Environmental Defence and FRPO cost claims, arguing that the claims were excessive and should be reduced.

¹ Bobcaygeon Community Expansion Project (EB-2022-0111, May 14, 2024); Neustadt Community Expansion Project (EB-2023-0261, May 23, 2024); Eganville Community Expansion Project (EB-2023-0201, May 30, 2024); and Sandford Community Expansion Project (EB-2023-0200, July 4, 2024).

Reply submissions were filed by Environmental Defence and FRPO on May 5, 2025, and May 12, 2025, respectively.

Costs Claimed by Environmental Defence

In its submission, Enbridge Gas noted that it did not object to Environmental Defence's smaller cost claim of \$983.10 (inclusive of HST) related to FRPO's motion. However, regarding Environmental Defence's own review motion, Enbridge Gas proposed that Environmental Defence's cost claim of \$12,933.98 (inclusive of HST) be reduced by 40% to \$7,760, or alternatively to \$9,250.

Enbridge Gas submitted that Environmental Defence's motion was similar to its previous review motion in respect of other NGEF-related projects (EB-2023-0313), thereby suggesting that efficiencies should have been realized. Enbridge Gas stated that Environmental Defence's claim for this motion was significantly higher than its claims for the previous review motion and for the main underlying project application, the Bobcaygeon project. Enbridge Gas stated that Environmental Defence's hours and costs in the EB-2023-0313 review motion totaled 31 hours and \$9,236 (including HST), which the OEB found to be reasonable. Enbridge Gas also submitted that not only were Environmental Defence's hours and cost claim on this subsequent motion not lower on account of having realized efficiencies, but they were approximately 33% higher, at 42.8 hours, totaling \$12,933.98 (including HST). Enbridge Gas also noted that this cost claim was also significantly higher than Environmental Defence's approved cost claim for the Bobcaygeon project application. Enbridge Gas observed that for the entire Bobcaygeon application (all phases of it), Environmental Defence's cost claim totaled \$7,935 (including HST). Enbridge Gas argued that the cost claim for this review motion, which focused only on the decision to deny evidence and certain other specific points, should not be higher than the cost claim on the underlying proceeding and noted that the review motion involved one set of submissions, focusing principally on Bobcaygeon (it did not involve different issues and submissions for each of the NGEF projects).

Enbridge Gas also noted that Environmental Defence's late request for a stay was unnecessary and did not comply with OEB rules. Enbridge Gas submitted that Environmental Defence should not in these circumstances be reimbursed for costs in respect of making its stay request.

Enbridge Gas expressed concern over the repetitive nature of Environmental Defence's review motions and the corresponding cost awards burdening the regulatory process. Enbridge Gas submitted that despite continuing to oppose NGEF projects almost

entirely on the stated grounds of ratepayer financial interests, Environmental Defence is an environmental advocacy organization that does not have the representation of ratepayer financial interests as a main objective.

Enbridge Gas submitted that given the above reasons, an overall 40% reduction in Environmental Defence's cost claim on its review motion – reducing it to a total of \$7,760 (including HST) – was appropriate. Enbridge Gas stated that this would represent an approved amount of costs essentially in line with Environmental Defence's total approved costs on the underlying Bobcaygeon application and would be approximately \$1,475 lower than its costs on its similar prior review motion in EB-2023-0313 proceeding since there ought to have been some efficiencies in bringing a second similar motion. Enbridge Gas further submitted that alternatively, at its highest, Environmental Defence's costs should be no greater than \$9,236, which was the amount of its approved costs in its earlier review motion.

In its reply submission filed on May 5, 2025, Environmental Defence countered Enbridge Gas's cost claim objections, arguing that the requested costs were very modest in comparison to the work involved in this matter, the complexity of the issues, and all relevant benchmarks. Environmental Defence stated that this was a legally complex matter that necessitated legal research regarding the law of procedural fairness and detailed submissions. Environmental Defence submitted 30 pages of single-spaced submissions, including its initial and reply submissions. Environmental Defence noted that its submissions were detailed, with 91 citations to the evidence and case law, and that the length of the Review Panel's decision also speaks to the complexity of the case, comprised of 40 pages of reasons, showing that it was not a simple matter. Environmental Defence asserted that the request for approximately \$12,000 in fees is a low price to pay for the work involved in preparing lengthy and detailed submissions in a complex proceeding such as this. Environmental Defence further stated that Enbridge Gas's own submissions on the merits of the review, which were 40 pages long, also show the complexity of the motion. Environmental Defence noted that Enbridge Gas did not indicate the legal costs that it incurred for the review, but that the Review Panel can reasonably estimate that they would be considerably higher than the costs sought by Environmental Defence in this matter.

In response to Enbridge Gas's argument that Environmental Defence's costs should be reduced because of efficiencies that it should have realized given the similarities with EB-2023-0313 review motion, Environmental Defence argued that the current review proceeding involved a request to submit proposed survey evidence, a different set of underlying leave-to-construct applications, and 23 times higher capital costs.

Environmental Defence stated that it undertook more legal research and prepared longer submissions in the current review motion proceeding compared to EB-2023-0313 review motion proceeding, justified, in part by the high capital costs at issue.

Environmental Defence stated that its initial submissions in this review were approximately twice as long as those in EB-2023-0313 and argued that if legal research is removed from the dockets of this review proceeding, the total costs roughly equal those in EB-2023-0313.

Environmental Defence argued that Enbridge Gas's cost comparison is restricted to one of the four proceedings (\$7,935 in Bobcaygeon), while ignoring the other three, stating that the fact that it was efficient in the underlying proceedings and incurred very low costs should not be used as an argument against the very modest costs it seeks in this review motion proceeding.

Addressing Enbridge Gas's argument about the unnecessary stay request, Environmental Defence noted that only three hours of costs were incurred in relation to the stay, further asserting that intervenors should not be penalized for pursuing perspectives that do not ultimately prevail.

Environmental Defence disputed Enbridge Gas's argument for costs to be reduced because Environmental Defence is an environmental advocacy organization, stating that it is not an appropriate justification to reduce an intervenor's properly incurred costs and argued that it represented more than the public interest in environmental protection, representing ratepayers that want both clean and affordable energy. Environmental Defence submitted that in this specific proceeding, that includes gas customers who do not want to further subsidize the expansion of fossil fuel pipelines beyond the amounts mandated in NGEF, which it argued is a valid and important ratepayer interest.

Environmental Defence submitted that in deciding whether to disallow costs, the OEB should consider that doing so can increase the asymmetry of resources between applicants and intervenors. Environmental Defence further submitted that Enbridge Gas's lawyers and experts are guaranteed payment at any agreed-on rate no matter the outcome of a proceeding and Enbridge Gas is always able to recoup those costs from ratepayers but that is not the case for intervenors, who are subject to disallowances and the OEB's tariff. Additionally, Environmental Defence argued that Enbridge Gas's arguments in this proceeding will only serve to increase the resource imbalance between applicants and intervenors, negatively impacting the robustness of OEB proceedings. Environmental Defence highlighted the importance of external

participation in OEB adjudicative proceedings and the necessity of covering intervenor costs to ensure a diversity of perspectives.

Costs Claimed by FRPO

Enbridge Gas argued that FRPO's cost claim of \$13,424.40 (inclusive of HST) should be reduced by 50% to \$6,712 in relation to its own review motion. Enbridge Gas highlighted that FRPO's motion was narrow in scope, focusing on one aspect of the Bobcaygeon project, and that the 36 hours claimed for preparing limited material is excessive. Enbridge Gas additionally argued that several grounds pursued by FRPO were deemed devoid of merit, including a temporary stay request that was later withdrawn.

FRPO filed its reply to Enbridge Gas's objection on May 12, 2025. Regarding the Bobcaygeon gas expansion project, FRPO emphasized its technical expertise and the importance of baseline customer demand data, which was missing from Enbridge Gas's application. FRPO asserted that its motion was necessary to highlight this gap and ensure a rigorous review process. FRPO also argued that there was no evidence supporting the need for the Reinforcement pipeline in 2026 and clarified that their request for a stay was for an alternative solution to facilitate a technical conference. FRPO requested that their costs be awarded, stressing the importance of thorough review processes to avoid unnecessary expenses for stakeholders.

Findings

The OEB has reviewed the claim to ensure compliance with its [Practice Direction on Cost Awards](#).

In its objection to the cost claims, Enbridge Gas stated that it was important for the OEB to be consistently mindful of the Minister of Energy and Electrification's expectation that the OEB ensure "intervenors are cost effective, efficient and in the public interest". The OEB is fully cognizant of doing so, in accordance with the Practice Direction, as it is equally mindful of the value intervenors bring to the adjudication process.

Enbridge Gas in its objection raised a valid point in respect of the cost of FRPO's request for a stay of construction of the Reinforcement Pipeline, as well as the stay request by Environmental Defence. However, given the complexity of this proceeding relative to the costs claimed by FRPO and Environmental Defence, and in view of the considerations set out in section 5.01 of the Practice Direction, the OEB finds the cost claims to be reasonable and it approves the claims as filed.

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 Environmental Defence Canada Inc. and The Federation of Rental-housing Providers of Ontario for their costs:

- Environmental Defence Canada Inc. \$13,917.08
- The Federation of Rental-housing Providers of Ontario \$13,424.40

DATED at Toronto June 2, 2025

ONTARIO ENERGY BOARD

Ritchie Murray
Acting Registrar