Elson
Advocacy

June 27, 2025

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Marconi:

Re: Enbridge Gas Inc. 2024 to 2028 Rates Application
EB-2024-0111

I am writing on behalf of Environmental Defence Canada and the Green Energy Coalition ("GEC") to respond to the cost claim objections of Enbridge dated June 20, 2025. There is no basis to reduce these cost claims. Contrary to Enbridge's suggestions, Environmental Defence and the Green Energy Coalition acted responsibly, avoided duplication, and provided an important contribution, particularly in relation to the proposed energy transition spending proposals and ways to align Enbridge's incentives with the interests of consumers in the context of the energy transition.

Duplication and overlap

Enbridge submits that the OEB should look back to the following comments in *Procedural Order #1* and consider how intervenors have complied with that direction: "[the OEB will] be carefully monitoring intervenor participation for unnecessary duplication and overlap in the production of any evidence, the conduct of discovery and the filing of argument in this proceeding."[1] We agree that this is appropriate criteria but we disagree that that is a valid basis for reducing the costs of Environmental Defence and the GEC.

Environmental Defence and the GEC were highly coordinated in this proceeding. They participated with only one representative with respect to all aspects of this proceeding, including the settlement conference, technical conference, and hearing. They also prepared submissions jointly. Had they each sent a representative to steps like the settlement conference and technical conference, or prepared separate submissions, the costs would have been considerably higher. There was absolutely no duplication or overlap.

[1] Enbridge Letter, June 20, 2025, p. 2.

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Quantum of counsel hours

Enbridge objects to the number of hours expended by counsel for Environmental Defence.[2] These objections are completely unfounded. The costs for Environmental Defence counsel were low in comparison some other intervenors that played a much more minor role in the proceeding and in comparison to the actual work involved in this proceeding.

Environmental Defence's counsel costs were not the highest among intervenors, or even in the highest three. However, Environmental Defence's participation was significantly more substantial than many other intervenors. For instance, Environmental Defence was the only intervenor required to submit *four* sets of arguments, which it agreed to do at the request of Enbridge.[3] Environmental Defence submitted two pieces of expert evidence whereas no other intervenors submitted expert evidence (aside from the GEC's joint evidence with Environmental Defence). Environmental Defence argued a motion and played a central role in two of the three issues that were ultimately contested. It also played an important role in a number of resolved issues.

Also, my counsel time has been claimed entirely under Environmental Defence whereas the majority of my work was submitted on behalf of both Environmental Defence and the GEC. The counsel costs attributed to the Green Energy Coalition are only $4,556. If we had divided the time equally between the cost claims for each group, each would have been considerably less than average ($48,746.50 versus $61,339) and among the lowest of all parties.

Overall, Environmental Defence provided an important contribution in phase 2. Without Environmental Defence and the GEC, there would have been little to no examination of how Enbridge's incentives may or may not be aligned with customers in the context of the energy transition. Without Environmental Defence and the GEC, there would have been a much thinner record on Enbridge's proposed energy transition proposal spending. These energy transition issues are complex and are being grappled with across North America. The OEB benefits from a variety of perspectives in undertaking the very difficult task of protecting customers in this time of change.

Ultimate outcome

Enbridge argues that Environmental Defence's costs should be reduced on the basis that it was "not successful" and it "failed to establish its proposal."[4] However, Environmental Defence was able to successfully settle a number of issues. Also, a lack of success on contested issues is not a valid basis to disallow costs any more than it would be a valid basis to require Enbridge's shareholder to bear legal costs in relation to any contested issues that it loses. Enbridge knows this and yet it repeatedly attempts to have the costs of Environmental Defence disallowed on this basis. The OEB should reject Enbridge's argument here on the same basis that it did in EB-2023-0313:

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[2] Enbridge Letter, June 20, 2025, p. 4.
[3] *Procedural Order #10*, December 20, 2024.
[4] Enbridge Letter, June 20, 2025, p. 4.

> 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."[5]

Enbridge seems to suggest that it was somehow improper or irresponsible for Environmental Defence to argue for revenue to be decoupled from customer counts and that it should be penalized because it "persisted with advancing its revenue decoupling proposal."[6] There is no basis for this argument. Although Environmental Defence's position did not ultimately win the day, the OEB simply found that it would be premature to implement this kind of revenue decoupling "at this time" because such proposals "would need to be understood in the context of the work to be done by Enbridge Gas to carry out a proper assessment of the risk to the utility and its ratepayers posed by the energy transition, along with a review of the appropriateness of its current depreciation policy in the face of the energy transition."[7]

CEG Evidence

Enbridge argues for a cost reduction on the basis that the CEG evidence "was not helpful."[8] That is unfounded. The CEG evidence provided six recommendations, five of which were ultimately settled. This included commitments from Enbridge to consider and put forward concrete proposals regarding topics such as a differentiated return on equity that would distinguish between spending that is more and less risky from an energy transition perspective. This was helpful and important.

Enbridge argues that the CEG proposals should have been highly detailed. That was never the intention and the initial evidence letter did not say that it would involve highly detailed proposals. There is absolutely no way that CEG could have developed its high-level recommendations and then also put forward complex implementation details for each of these within anywhere close to the budget that it proposed or the available time. Furthermore, the OEB did not ultimately rule that the CEG proposals were insufficiently detailed to be implemented – they said the revenue decoupling proposal was premature.

Enbridge argues that CEG costs should be disallowed because parties did not support its conclusions. This is incorrect. Most parties shared the core concerns raised by CEG. Excerpts from intervenor submissions are include in Appendix A below. In any event, support from a majority of intervenors is not the test used by the OEB to award expert evidence costs.

Finally, the CEG's evidence was very good value for money and was completed for less than the estimated costs. The CEG did exactly what it said it would do, which resulted in important elements of the settlement agreement and an important contested issue. Indeed, the CEG had a very difficult task relating to a cutting-edge question of how to properly incentivize gas utilities

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[5] EB-2023-0313, Decision and Order on Cost Awards, March 5, 2024, p. 3 (Motion to Review and Vary OEB Decisions in EB-2022-0156/EB-2022-0248/EB-2022-0249) (link).
[6] Enbridge Letter, June 20, 2025, p. 4.
[7] Decision and Order, May 29, 2025, p. 21.
[8] Enbridge Letter, June 20, 2025, p. 4.

in the context of a transition away from fossil fuels. Its work was not only helpful, but extremely good value in light of the difficulty of the task it was asked to complete.

GEC Costs

Environmental Defence suggests that the costs for GEC should be reduced "in relation to the expert costs for Current Energy Group." It is unclear what Enbridge is referring to as the expert costs for the Current Energy Group were claimed in the Environmental Defence cost claim. Also, the counsel costs for the GEC were extremely low – only $4,556.

The majority of the costs for GEC are for the expert report by the Energy Futures Group. Enbridge does not object to the EFG costs. In any event, the value of that evidence is briefly addressed in the covering letter to the GEC cost claim.

Phase 3 costs

Enbridge states that it "is mindful that Phase 3 of the rebasing proceeding is just beginning" and that "it is important to set expectations for the responsible intervention of parties."[9] This is no basis to disallow Environmental Defence or GEC costs. Furthermore, Environmental Defence and GEC expect to play a much smaller role in phase 3 as the phase 1 and phase 2 issues were much more important for their expertise and interests, including in relation to the energy transition.

Importance of intervenor costs

The OEB should take care when considering whether to disallow costs, as doing so can increase the asymmetry of resources between applicants and intervenors. Enbridge's lawyers and experts are guaranteed payment at any agreed-upon rate no matter what the outcome of a proceeding and Enbridge is always able to recoup those costs from ratepayers regardless of proceeding outcomes. That is not the case for intervenors, who are subject to disallowances and the OEB's tariff.

This is particularly the case for environmental non-profits such as Environmental Defence and the Green Energy Coalition, which have absolutely no resources to cover costs that are not reimbursed by the OEB via a cost award, pay costs on an interim basis while cost awards are pending, or top-up the OEB tariff. Accepting Enbridge's arguments on costs in this proceeding will only serve to increase the resource imbalance between parties and decrease the robustness of OEB proceedings.

Conclusion

Finally, it is important to recognize that the gas sector is not in a business-as-usual moment. Regulatory oversight is more important and challenging when the fossil fuels that run through the pipelines in question are slated to be phased out. This increases the stakes and complexity of

[9] Enbridge Letter, June 20, 2025, p. 4.

gas regulation. In this context, and in light of the above submissions, we respectfully request that the cost claims of Environmental Defence and the GEC be awarded in full.

Yours truly,

Kent Elson

cc: Parties to the above proceeding

Appendix A

CEG's recommendation #2 was a high-level proposition that revenue should be decoupled from customer numbers. Most of the parties that took a position on this issue agreed with this high-level proposition and/or the concerns underlying it. We have excerpted relevant quotes below from the parties in this regard:

School Energy Coalition

SEC generally agrees with ED/GEC's view that there is a broad misalignment between Enbridge's interests and those of its customers as the energy transition progresses, creating significant financial risks for both existing and new customers. …

SEC acknowledges that a properly designed customer count revenue decoupling mechanism could be designed to better align the incentives of customers and Enbridge. …

ED/GEC's concerns about Enbridge's alleged anti-electrification and pro-gas bias, demonstrated through its planning processes, potentially deceptive marketing, or other means to inappropriately discourage customer exits are real.[10]

Minogi and Three Fires Group:

Minogi and Three Fires support the alternative relief sought by Environmental Defence and GEC, being the proposal to decouple EGI's revenue from its customer counts on an implementation timeline coinciding with EGI's next rebasing application. …

Minogi and Three Fires offer the following comments in support of their position. These comments focus on their view that the Revenue Decoupling Proposal could serve to mitigate the risk of stranded assets as well as improve customer choice in the context of the energy transition, both of which are issues of very high importance to Minogi and Three Fires, as well as the First Nations they represent.[11]

Consumers Council of Canada

CCC is concerned with the long-term implications for consumers of stranded assets and believes that additional mechanisms to address stranded asset risk may be required in the future. …

It may be that revenue decoupling can be designed in a manner, or implemented along with other mechanisms, that effectively, and in a manner that is fair to the utility and ratepayers, addresses stranded asset risk…[12]

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[10] Submissions of SEC, p. 6, 7, & 9.
[11] Submissions of Minogi and Three Fires Group, p. 23.
[12] Submissions of CCC, p. 25.

Pollution Probe

Pollution Probe supports OEB actions that reduce Enbridge's over-incentive to retain or grow natural gas customers and invest excess Capital that will become underutilized or stranded. One single action will not achieve that full objective, but revenue decoupling is one tool to help move in the right direction over the current rate term.

Enbridge's proposed status quo approach is not aligned with true consumer choice or the needs in Ontario as the Energy Transition continues to accelerate. Over-incentivizing natural gas connections and related Capital expenditures is not sustainable, prudent or in the public interest today or for the future.[13]

Industrial Gas Users Association

IGUA does agree with ED/GEC, and EGI appears to as well, that the regulatory framework applicable to rate regulated gas utilities is ripe for re-examination. IGUA further agrees with ED/GEC, and EGI seems to have acknowledged, that steps to mitigate stranded cost risks are important. IGUA has some sympathy for the view that these considerations are somewhat time sensitive (i.e. sooner would be better than later).[14]

London Property Management Association

LPMA submits that the OEB should direct EGI, in consultation with ratepayer groups, OEB Staff and other interested parties to investigate the impacts of the ED/GEC proposal and/or other similar measures of the impact on ratepayers and on EGI and part of the broader review due at the next rebasing application.

Further, LPMA submits that the OEB may want to consider directing EGI to provide the studies and reports that it has been directed to complete with respect to mitigating stranded asset risks ***prior to the filing*** of the rebasing application. (emphasis in original)

Quinte Manufacturers Association

The QMA recognises that revenue decoupling has been used as a regulatory tool in certain jurisdictions in the United States to break the link between utility revenue and adding end use customers through expansion of a gas distribution network.[15]

[13] Submissions of Pollution Probe, pp. 19 & 21.
[14] Submissions of IGUA, p. 5.
[15] Submissions of the QMA, p. 4.