



EB-2006-0305

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O.1998, c.15;

AND IN THE MATTER OF an Application by Enbridge Gas
Distribution Inc. for an Order pursuant to Section 90(1) of
the *Ontario Energy Board Act, 1998*, granting leave to
construct natural gas pipelines in the City of Toronto;

AND IN THE MATTER OF an award of costs pursuant to
section 30 of the OEB Act.

BEFORE: Gordon Kaiser
Vice Chair and Presiding Member

Paul Vlahos
Member

Ken Quesnelle
Member

COST DECISION AND ORDER

Enbridge Gas Distribution Inc. ("Enbridge") filed an application with the Ontario Energy Board (the "Board") on December 7, 2006, under section 90 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B, for an Order for Leave to Construct natural gas pipelines for the purpose of supplying gas to the already approved Portlands Energy Centre generating station ("Portlands") in the City of Toronto. Portlands Energy Centre, Union Gas Limited, the Toronto Economic Development Corporation ("TEDCO") and Mr. Paul Beatty, who represented a concerned landowner, applied for and were granted intervenor status.

A Technical Conference was held at the Board's offices on April 2, 2007 where Enbridge answered questions regarding the pre-filed evidence. TEDCO and Mr. Beatty did not participate in the Technical Conference.

On April 5, 2007 the Board issued Procedural Order No. 2 with a Proposed Issues List for comments by April 10, 2007. Aside from Enbridge, which found the list to be appropriate, no comments were received from intervenors. On April 11, 2007 the Board directed the unchanged Proposed Issues List be the Final Issues List.

The oral hearing took place on April 16, 2007 at the Board's offices in Toronto and was concluded the same day. TEDCO and Paul Beatty participated in the oral hearing. Mr. Beatty made comments to the Board and provided documents to them. TEDCO cross examined the Applicant on one issue, the form of the easement, and made written argument on that issue. No other intervenors appeared or made written argument.

On June 1, 2007 the Board issued a Decision and Order approving construction of proposed pipelines and setting a time-line¹ for cost claims and submissions from eligible intervenors. TEDCO is the only intervenor who applied for and was granted cost award eligibility status by the Board.

On August 10, 2007, approximately 40 days after the issuance of the time-line, TEDCO filed its cost claim. The amount claimed at that time was \$ 18,163.47. In total, seven lawyers were listed as having worked on the file, and in excess of 80 hours were billed. No dockets or supporting information was provided.

By a letter dated August 23, 2007 Enbridge objected to the costs claim, and submitted that a cost award of \$8,000 to \$ 10,000 would be appropriate. Enbridge stated that the hours claimed were excessive for an oral hearing which took less than one day and dealt with issues that were neither complex nor novel. Enbridge also maintained that TEDCO used the OEB proceeding to advance its negotiating position with Enbridge.

¹ "Eligible intervenors who seek an award of costs incurred to date shall file their cost submissions in accordance with the *Practice Direction on Cost Awards* with the Board Secretary and with Enbridge Gas Distribution Inc. within 15 days of the date of this Decision. Enbridge Gas Distribution Inc. may make submissions regarding the cost claims within 30 days of the Decision and the intervenors may reply within 45 days of the Decision. A decision and order regarding cost awards will be issued at a later date. Upon receipt of the Board's cost award decision and order, Enbridge Gas Distribution Inc. shall pay any awarded costs with dispatch."

TEDCO did not file a response to the objection by Enbridge.

On October 30, 2007 Board Staff asked TEDCO for supporting time docketed and invoices to complete the cost claim filing, and requested the cost claim be revised to exclude any reference to settlement negotiations. On November 21, 2007, the Board Secretary requested the time docketed again.

On November 23, 2007 TEDCO filed the time docketed and invoices, and revised its August 10, 2007 cost claims to exclude any reference to settlement negotiations. The revised cost claim for fees with the supporting docketed is \$17,352.20. The disbursements claimed are \$319.32. A summary of the costs and hours claimed is attached in Appendix "A".

A total of 62.7 hours were claimed by TEDCO's legal counsel, Mr. Tom Brett, for his participation in this matter with 44.2 hours allocated to preparation for the hearing. Approximately 31 hours were docketed for preparing written argument of which Mr. Brett docketed 11.5 hours; David Sunday, a junior lawyer, docketed 14.7 hours; and five other lawyers in the firm accounted for the balance.

Enbridge reviewed the docketed and made written submissions dated November 29, 2007. Enbridge did not take issue with the disbursements claimed or legal counsel's time docket for attending the hearing. Enbridge maintained its position that the hours for preparation and legal argument were excessive given, the nature and duration of the hearing, and proposed that the docketed for Mr. Brett's preparation should be limited to 20 hours and the docketed for legal argument should be 15 hours in total.

Board Findings

The Board finds that the hours docketed by TEDCO are excessive given the length of the hearing and the role played by TEDCO. and that the cost claim by TEDCO is not proportional to the contribution that TEDCO made to the proceeding. The cost claim therefore should be adjusted accordingly. The Board finds that a reasonable amount to be awarded for TEDCO is 50% of its total legal fees and 100% of its disbursements.

The Board directs Enbridge to pay the cost award upon receipt of the Board's Cost Order. The Board further directs that Enbridge shall also pay the Board's costs of, and incidental to, this proceeding immediately upon receipt of the Board's invoice.

THE BOARD THEREFORE ORDERS THAT, pursuant to section 30 of the *Ontario Energy Board Act, 1998* Enbridge Gas Distribution Inc. shall immediately pay:

1. TEDCO the sum of:
 - **\$ 8,676.10** which represents 50% of claimed costs for legal fees;
 - **\$ 319.32** for disbursements which represents 100% of claimed disbursement costs claimed.
2. The Board's costs of, and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, January 30, 2008

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary