



Ontario  
Energy  
Board | Commission  
de l'énergie  
de l'Ontario

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# **DECISION AND ORDER ON COST AWARDS**

**EB-2022-0086**

## **ENBRIDGE GAS INC.**

**Application for leave to construct natural gas pipeline and ancillary facilities in the Township of Dawn-Euphemia and St. Clair Township**

**BEFORE:** **Patrick Moran**  
Presiding Commissioner

**Robert Dodds**  
Commissioner

**David Sword**  
Commissioner

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**January 13, 2023**

## OVERVIEW

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on March 21, 2022, for leave to construct approximately 20 kilometres of natural gas pipeline from its Dawn Operations Centre in the Township of Dawn-Euphemia to its Corunna Compressor Station in St. Clair Township.

The OEB granted the following parties intervenor status and cost award eligibility.

- Canadian Association of Energy and Pipeline Landowner Associations and its subcommittee, the Dawn Corunna Landowner Committee (CAEPLA-DCLC)
- Canadian Manufacturers & Exporters (CME)
- Energy Probe Research Foundation (Energy Probe)
- Environmental Defence
- Federation of Rental-housing Providers of Ontario (FRPO)
- Industrial Gas Users Association (IGUA)
- Pollution Probe
- School Energy Coalition (SEC)
- Three Fires Group Inc. (Three Fires)<sup>1</sup>

On November 3, 2022, the OEB issued its Decision and Order in which it set out the process for cost claims.

The OEB received cost claims from CAEPLA-DCLC, CME, Energy Probe, Environmental Defence, FRPO, IGUA, Pollution Probe, SEC, and Three Fires.

On November 17, 2022, Enbridge Gas filed a letter stating that it had no objections to the cost claims except for the cost claim of Three Fires. Enbridge Gas noted that in its Procedural Order No. 1, dated May 24, 2022, the OEB stated that, “[c]ost eligible intervenors should be aware that the OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party, unless a compelling reason is provided when cost claims are filed.” Enbridge Gas noted that Three Fires’s cost claims reflected the participation of 6 representatives. Enbridge Gas stated that Three Fires’s cost claims exceeded those claimed by all other parties to the proceeding, being nearly 2.5 times the average of all other parties and exceeding the next highest level of costs claimed by a party by more than \$10,000 (35% higher).

In response to Enbridge Gas’s objection, Three Fires noted that its cost claims reflected an important effort to protect and the rights of Enbridge Gas’s Indigenous customers in

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<sup>1</sup> On July 21, 2022, CKSPFN filed a letter stating that Caldwell First Nation had joined with CKSPFN for the purposes of this proceeding and that their participation would continue under the name of Three Fires Group Inc.

a cost-effective and efficient manner. Three Fires further noted that Enbridge Gas's proposals implicated the interest of its Indigenous customers on a wide range of discrete and complex issues. Three Fires stated that its consultants played an essential role in coordinating and communicating with the leadership of the Three Fires First Nations and their members, ensuring Indigenous participation in the proceeding, and providing important context to the OEB regarding the unique circumstances of Enbridge Gas's Indigenous customers impacted by the project.

In response to Enbridge Gas's objection, Three Fires submitted that the timing of its review and consideration of relevant and important issues for the Three Fires was accordingly extended by Enbridge Gas's "documented failure to consult at the earliest stages of its determination of the need for the Project and the considerable delay in providing specific documents and data materials requested by the Three Fires First Nations at numerous engagement points prior to and throughout the Proceeding."

Three Fires further noted that it pursued a cost-effective approach to delegating work to its legal counsel for its intervention and specifically noted that the bulk of the work for the technical conference was done by a second-year call overseen by a fifth-year call. In addition, Three Fires's submissions were primarily prepared cost-effectively by a second-year call. Three Fires therefore submitted that this ensured that its interventions were highly focused, minimized the need for further clarification and undertaking responses from Enbridge Gas, and, most importantly, were respectful of the OEB's timelines, directions, and approach to cost containment.

## Findings

The OEB has reviewed the cost claims to ensure that they are compliant with the OEB's *Practice Direction on Cost Awards*. The OEB approves the cost claims submitted by CAEPLA-DCLC, CME, Energy Probe, Environmental Defence, FRPO, IGUA, Pollution Probe and SEC.

Three Fires has filed a claim for \$39,981.10 based on 164.95 hours contributed by six consultants, including four lawyers, to support their intervention. This claim is significantly higher than the claims filed by other intervenors and is approximately \$10,000 higher than the next highest claim.

In its decision on the application, the OEB stated:

Enbridge Gas should consider approaching Indigenous communities earlier in the developmental stage for future projects that may be brought forward for the

OEB's consideration to discuss environmental, archeological and monitoring issues along with issues pertaining to route selection and alternatives. While that would have been helpful in the present case, the OEB is of the view that TFG was able to pursue in a meaningful way all of the issues it identified during the course of consultation and in this proceeding, as evidenced by its submissions.

While earlier engagement between Enbridge Gas and Three Fires may have reduced the scope of Three Fires' intervention, the OEB is of the view that their claim is not fully justified under the circumstances of this proceeding. While Three Fires' intervention was of assistance to the OEB, the time claimed for the preparation of interrogatories and submissions is excessive. Three Fires' claim is reduced to \$32,500, inclusive of HST, representing a disallowance of approximately 30 hours based on the average cost of \$242.38 per hour claimed.

#### **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:

• Canadian Association of Energy and Pipeline Landowner Associations	\$21,675.66
• Canadian Manufacturers & Exporters	\$7,900.96
• Energy Probe Research Foundation	\$15,112.36
• Environmental Defence	\$9,334.93
• Federation of Rental-housing Providers of Ontario	\$29,459.10
• Industrial Gas Users Association	\$8,432.06
• Pollution Probe	\$17,246.63
• School Energy Coalition	\$20,920.82
• Three Fires Group Inc.	\$32,500.00

**DATED** at Toronto January 13, 2023

#### **ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar