



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

DECISION AND ORDER ON COST AWARDS

EB-2014-0182

UNION GAS LIMITED

Application for leave to construct a natural gas pipeline and ancillary facilities in the Town of Milton and the Town of Oakville and for approval to recover the cost consequences of the development of the proposed Burlington Oakville Project.

BEFORE: Emad Elsayed
 Presiding Member

Christine Long
 Member

March 15, 2016

INTRODUCTION AND SUMMARY

Union Gas Limited (Union) applied to the Ontario Energy Board (OEB) on December 12, 2014 under section 90(1) of the *Ontario Energy Board Act, 1998* for leave to construct approximately 12 kilometres of a 20 inch pipeline and ancillary facilities extending from Union's Parkway West compressor station, situated in the Town of Milton, to Union's Bronte Gate Station, located in the Town of Oakville (the Project).

The OEB granted intervenor status and cost award eligibility to the Association of Power Producers of Ontario (APPo), Building Owners and Managers Association, Greater Toronto (BOMA), Canadian Manufacturers and Exporters (CME), Federation of Rental Property Owners (FRPO), London Property Management Association (LPMA), Ontario Greenhouse Vegetable Growers (OGVG), School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC).

On December 17, 2015, the OEB issued its Decision & Order in which it set out the process for intervenors to file their cost claims, for Union to object to the claims and for intervenors to respond to any objections raised by Union.

The OEB received cost claims from APPo, BOMA, CME, FRPO, LPMA, OGVG, SEC and VECC.

POSITION OF UNION

On January 14, 2016, the OEB received a letter from Union objecting to a portion of the costs claimed by FRPO and OGVG, both of whom were represented by Mr. Dwayne Quinn. Union objected to FRPO's and OGVG's cost claims due to alleged excessive number of hours claimed.

Union noted that the combined 95 hours claimed by FRPO and OGVG in respect of the oral hearing far exceeded the 65 hours claimed by all other intervenors combined. Union stated that Mr. Quinn participated in the oral hearing on behalf of FRPO only, did not appear for OGVG and did not make submissions on behalf of OGVG. Union noted that the cost claim for each of FRPO and OGVG included 47.5 hours for oral hearing preparation and/or attendance for a total of 95 hours.

Union also noted that no specific issue was unique to FRPO or OGVG in the proceeding. Mr. Quinn pursued the same issues and arguments and appeared to work with and rely on the expert witness co-sponsored by CME and OGVG in the same way

as when he represented OGVG alone. Union noted that in addition to 38 hours claimed for services provided to OGVG in respect of the Technical Conference which can be reasonably expected to support Mr. Quinn's preparation for the oral hearing, Mr. Quinn claimed 47.5 hours for the oral hearing on behalf of each of FRPO and OGVG, far exceeding the hours claimed for the same purpose by any other intervenors.

Union further noted that despite relying on the same consultant and sharing common issues of interest in this proceeding, FRPO's and OGVG's claims for fees total \$71,037.45 which is 45% more than the fees claimed by CME's counsel in the amount of \$48,965.16. CME's cost claim is a relevant comparator given that its position was aligned with that of OGVG and that CME and Mr. Quinn worked with the same expert witness.

Union submitted that the OEB should permit FRPO and OGVG to recover 50% of each of their fee claims. Union also submitted that the combined cost recovery by FRPO and OGVG should be no more than the amount granted to CME for the services of its counsel in this proceeding.

RESPONSE OF MR. QUINN (OGVG and FRPO)

In his response to Union's objection, Mr. Quinn noted that although the intervenor evidence was filed jointly by OGVG and CME, Mr. Quinn who took the lead in finding the expert and providing Ontario market context and pipeline developments. Mr. Quinn argued that Union's comparison of combined OGVG/FRPO hours with CME hours was inappropriate because the expert evidence preparation is included in CME hours and only CME and SEC attended the oral hearing.

With respect to the 38 hours, Mr. Quinn noted that DR Quinn & Associates Ltd. (DRQ) initiated the motion on behalf of OGVG for better and complete interrogatory responses that lead to the Technical Conference. Mr. Quinn further noted that the hours invested on behalf of FRPO were focused on Union's reply evidence and oral hearing preparation and attendance as a technical lead.

Mr. Quinn explained that FRPO, as technical lead, prepared and delivered extensive cross-examination of Union's witnesses at the oral hearing. Mr. Quinn noted that CME did not cross-examine the Union's witnesses.

ADDITIONAL COMMENTS BY CME

On February 12, 2016, CME filed additional comments to assist the OEB in understanding the role of CME and OGVG in co-sponsoring Ms. Aggie Cheung as an expert. CME and OGVG jointly worked with Ms. Cheung. CME took the lead role in legal aspects of the evidence and witness preparation, while Mr. Quinn was the technical lead on the Ontario market context and pipeline developments. CME determined that it did not need to cross-examine any Union's witnesses. Mr. Quinn's preparation and cross-examination of Union witnesses explains the 22 hour difference between Mr. Quinn's and CME's cost claims. CME submitted that CME and OGVG both acted responsibly in retaining Ms. Cheung and the costs of Ms. Cheung should be approved, along with the costs claimed by CME as her participation in the proceeding was in the public interest.

OEB FINDINGS

The OEB has reviewed the claims filed by APPrO, BOMA, CME, FRPO, LPMA, OGVG, SEC and VECC to ensure that they are compliant with the OEB's *Practice Direction on Cost Awards*.

The OEB finds that there is no significant duplication or overlap between the work carried out by Mr. Quinn for OGVG and FRPO, or between OGVG/FRPO's work and CME's work.

OGVG/FRPO

The OEB finds it reasonable that the combined claim of OGVG and FRPO is higher than that of CME given that OGVG/FRPO took the technical lead, secured and supported the expert evidence, and prepared for and delivered the cross examination at the oral hearing. CME took the lead in providing legal perspectives on evidence and witness preparation.

The OEB finds that the OGVG/FRPO combined claim for the oral hearing preparation (85.5 hours) to be excessive relative to the duration and scope of the oral hearing. The OEB will only allow 70.0 hours for this category. This is a reduction of 15.5 hours at a rate of \$330 /hour resulting in a cost reduction of \$5,115.00 plus HST (\$2,841.67 for OGVG and \$2,273.33 for FRPO).

CME

The OEB finds that CME's claim for interrogatories response (45.9 hours) and evidence preparation (46.3 hours) to be excessive when combined with the hours claimed by the expert witness in relation to these two steps. The OEB will reduce the interrogatories response hours to 32.0 (double the hours claimed by the expert witness) at a rate of \$290/hour resulting in a reduction of 13.9 hours or \$4,031.00 plus HST. The OEB will also reduce the evidence preparation hours to 31.0 (equal to the hours claimed by the expert witness) at a composite rate of \$270/hour resulting in a reduction of 15.3 hours or \$4,131.00 plus HST. This composite rate was determined by assigning the 15.3 hours to the three individuals who claimed hours in this category in proportion to their claimed hours and using their respective hourly rates.

The OEB will also disallow the \$82.49 claimed by CME for a flight change. The OEB is of the view that this type of expense, incurred for the convenience of the intervenor, is not a cost that should be borne by the ratepayer.

APPrO

APPrO claimed 24.75 hours for oral hearing preparation but did not attend the oral hearing. The OEB finds that there is limited value in these preparations if the party does not attend. The OEB will reduce these hours to 13.0 hours (approximately 50%), resulting in a reduction of \$3,877.50 plus HST.

BOMA

The OEB finds that BOMA's claim of 37.2 hours for interrogatories preparation to be excessive relative to the other intervenors. If one is to combine the claimed interrogatories preparation and response hours for the other intervenors, and excluding CME given its lead role in this area, BOMA's hours is 8.6 hours higher than the next highest intervenor. The OEB finds, based on the interrogatories filed by BOMA, that the additional hours are not justified and will reduce BOMA's claim by 8.6 hours (\$2,838.00) plus HST.

THE ONTARIO ENERGY BOARD ORDERS THAT:

Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Union shall immediately pay the following amounts to the intervenors for their costs:

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| Association of Power Producers of Ontario | \$28,385.53 |
| Building Owners and Managers Association, Greater Toronto | \$22,540.06 |

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| Canadian Manufacturers and Exporters | \$83,545.36 |
| Federation of Rental Property Owners | \$32,692.90 |
| London Property Management Association | \$8,688.57 |
| Ontario Greenhouse Vegetable Growers | \$33,544.17 |
| School Energy Coalition | \$15,348.79 |
| Vulnerable Energy Consumers Coalition | \$8,675.45 |

Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Union shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

DATED at Toronto March 15, 2016

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary