



EB-2007-0606
EB-2007-0615

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

AND IN THE MATTER OF an Application by Union Gas Limited for an Order or Orders approving or fixing a multi-year incentive rate mechanism to determine rates for the regulated distribution, transmission and storage of natural gas, effective January 1, 2008;

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an Order or Orders approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2008;

AND IN THE MATTER OF a combined proceeding Board pursuant to section 21(1) of the *Ontario Energy Board Act, 1998*.

DECISION ON MOTION

Introduction

On August 23, 2007, the Consumers Council of Canada ("Council") filed an Amended Notice of Motion (the "Motion"). The Motion was supported by the Affidavit of Deborah L. Hurst. In its Motion, the Council sought the following relief:

- An Order that an interim cost award or awards be made to the Council after various phases of this proceeding, according to a schedule to be determined by the Board;

- An Order that interim and final cost awards be calculated using a scale of remuneration allowing an hourly rate of \$300 for senior counsel, consultants and experts.
- In the alternative, an Order granting the Council its reasonably incurred disbursement costs only, on a periodic basis throughout the course of the proceeding, according to a schedule to be determined by the Board.
- An Order that a final cost award be made within thirty (30) days of the delivery of final argument in the proceeding.

The Council also sought an award for the costs of the Motion.

The Board subsequently issued Procedural Order No. 7 setting out a written process to deal with the Motion, and established a timetable for comments from parties and reply submissions from the Council.

With respect to the Council's request for higher hourly rates for senior counsel, consultants and experts, the Board stated that the matter was beyond the purview of this proceeding and would be more appropriately dealt with in EB-2007-0683, the Board's Consultation on the Practice Direction on Cost Awards ("Consultation on Cost Awards").

Comments were received from:

- Green Energy Coalition ("GEC")
- Industrial Gas Users Association ("IGUA")
- Building Owners and Managers Association of the Greater Toronto Area ("BOMA"), London Property Management Association ("LPMA"), and Wholesale Gas Service Purchasers Group ("WGSPG")
- Vulnerable Energy Consumers Coalition ("VECC")
- School Energy Coalition ("Schools")
- City of Kitchener ("Kitchener")
- Union Gas Limited ("Union")
- Enbridge Gas Distribution ("Enbridge")

The Council also filed responding submissions.

Decision

For the reasons expressed below, the Board will grant the Council's Motion in part. Specifically:

- The Board will divide the proceeding into three phases for cost award purposes: (1) costs incurred up to the filing date for intervenor evidence; (2) costs incurred between the filing date for intervenor evidence and the end of the oral hearing; and, (3) costs incurred between the end of the oral hearing and the completion of argument.
- The phased cost award process will be available to each participant that is eligible for costs in this proceeding.
- The hourly rate for senior counsel, consultants and experts will be set at the current level on an interim basis. If the Board adopts higher rates at the conclusion of the Consultation on Cost Awards, the higher rates will be applied to the entire proceeding.

Analysis

Many parties commented on the extended length of proceedings and the resulting long period of time before costs are awarded and paid. This presents a hardship for many participants, and in their view, undermines the important role these participants have in the Board's processes. Due to the expected length of the Gas Incentive Ratemaking proceeding (EB-2007-0606/EB-2007-0615), the Board agrees that it should adopt a phased schedule for cost awards. Cost awards will be made after the filing of intervenor evidence, after the completion of the oral hearing, and after the completion of argument. Immediately following each of these events, the Board will issue a Procedural Order establishing the specific schedule for the filing of cost claims, objections and replies.

The Board disagrees with Union's position that an adequate assessment of cost claims can only be made at the end of the proceeding. At each stage in the proceeding (filing of intervenor evidence, completion of the oral hearing, completion of argument) the Board will be able to assess the claims with due consideration of the factors contained in the *Practice Direction on Cost Awards*.

The Board also disagrees with Enbridge's proposal that there be a 10% holdback on the claims. The Board intends to review each cost claim fully so that there is no requirement for a potential clawback of the award at a later time.

One aspect of the cost awards will be subject to change: the hourly rates for counsel, consultants and experts. As mentioned above, the Board is currently conducting the Consultation on Cost Awards. Part of that process includes a review of the hourly rates. The Board will apply whatever rates are established through that consultation to the EB-2007-0606/EB-2007-0615 proceeding. The Board will issue an Order adjusting prior cost awards, if the rates are finalized after one or more the cost award phases is complete.

In accordance with the submissions of the parties, this cost award process will be available to each participant which is eligible for an award of costs. GEC noted that its participation in the proceeding might be quite limited, and it might prefer to submit only one cost claim upon completion of the proceedings. The Board will also accept cost claims for the entire proceeding at the end of the argument phase. However, if a claim is made for one of the phases of the proceeding, no further claim may be made for that phase at a later time.

Council also seeks an Order that a final cost award be made within 30 days of the delivery of final argument in the proceeding. Similarly, IGUA recommended that there be a performance metric for finalizing cost awards and payments. This panel is not in a position to establish a Board metric for cost awards, and we will not impose a case specific metric in this instance. However, the recommendation for a cost award performance metric has merit, and the Board intends to develop and implement such a metric.

BOMA/LPMA/WGSPG submitted that interim cost schedules should be applied to other Board processes. This Decision applies only to the Gas IRM proceeding and is reflective of the specific circumstances of this proceeding. Other requests for interim cost award processes will need to be directed to the particular proceeding or consultation.

The Board will award costs for this Motion proceedings. The costs should be included within the claims for the first phase.

Cost awards for the Gas Incentive Ratemaking consultation which preceded the current proceeding (EB-2007-0606/EB-2007-0615) will be dealt with separately.

Dated at Toronto, October 15, 2007

Original signed by

Gordon Kaiser
Presiding Member and Vice Chair

Original signed by

Paul Sommerville
Member

Original signed by

Cynthia Chaplin
Member