Ontario Energy Board

Commission de l'Énergie de l'Ontario

EB-2006-0140
EB-2005-0520

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 just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas commencing January 1, 2007;

AND IN THE MATTER OF a request for review by Mr. Marc Crockford regarding certain decisions made.

BEFORE: Paul Sommerville
Member

Paul Vlahos
Member

DECISION

June 29, 2006

Background

By letter dated June 3, 2006, Marc Crockford, an intervenor of record in the 2007 Union Gas Rates proceeding (EB-2005-0520), filed a request for a Board review of two decisions it made in the course of that proceeding. The letter is attached as Appendix "A" to this Decision. Mr. Crockford asked for and received an extension of time for the filing of his request for review.

First, he requested that the Board review its decision made on May 11, 2006 to deny his earlier Motion. This earlier Motion, which was filed on May 5, 2006, sought a Board order requiring Union Gas Limited to correct alleged defects in its responses to a series of interrogatories filed by Mr. Crockford. In its decision on that Motion the Board found that Mr. Crockford's Motion was without merit.

Second, Mr. Crockford seeks a Board review of its decision to accept the Settlement Agreement as dispositive of the issues reflected in it. This decision was made orally on May 23, 2006.

The Board's authority to review its own decisions is governed by the Statutory Powers Procedure Act ("SPPA") and Rules 42, 44 and 45 of the Board's Rules of Practice and Procedure.

Pursuant to Rule 44, the review is to be directed to the correctness of the Board decision being reviewed.

Pursuant to Rule 45, the Board may dispose of a request for review with or without a hearing if it finds that the request does not meet a threshold standard. If, after its review of the materials submitted by Mr. Crockford, the Board considers that he has not substantiated his request for changes to the decisions complained of, the Board can

find that his request for review has not met the threshold, and the Board will dispose of it without a hearing.

Mr. Crockford's overarching assertion is that the panel erred when it declined to require Union to provide answers and evidence as requested by him in his Motion of May 5, 2006. Mr. Crockford asserts that pursuant to Rules 28 and 29, and the SPPA, Union is required to provide answers to interrogatories. In his view, this error also robs the Board's decision to accept the Settlement Agreement of validity. He contends that insofar as his request for further responses from Union was denied, the Settlement Agreement is based on an insufficient evidentiary basis with respect to the issues he has advanced.

Given that his complaint centers on the adequacy of Union's responses to Interrogatories, it is appropriate to provide a brief description of the procedural steps the Board has taken in this case to provide for the filing of Interrogatories, and Interrogatory responses.

The Interrogatory Process

The Board is obliged to govern its processes and manage hearings in a manner that is effective, efficient and fair to the parties, while serving the public interest. In order to accomplish these goals, the Board has established an interrogatory process that is designed to develop evidence that is relevant to the proceeding in an efficient manner. Parties are required to relate their interrogatories to the Applicant's evidence. This ensures that the questions asked in the interrogatories are genuinely relevant to the issues the Board has to decide in the proceeding. The Issues List was developed by the Board after hearing submissions from the parties. It forms the fundamental architecture of the evidence in the case. If interrogatories can be related to the Issues List, they must be answered, provided they are relevant and seek to solicit information

that will be helpful to the Board in deciding the case. The first round of interrogatories is directed to the evidence filed by the Applicant in the proceeding, in this case Union Gas.

The Board's procedure then provides for the filing of Intervenor evidence, and an interrogatory process is directed to that evidence.

Once that aspect of the proceeding has been completed, Board procedure provided for a Settlement Conference to be held May 1 to May 12, 2006. Following the Settlement Conference, the hearing ensued.

Procedural Order No. 4, which was issued on March 24, 2006, finalized the Issues List and placed Mr. Crockford's Interrogatories within the issues reflected on the Issues List. This Procedural Order also afforded him an extension of time to file interrogatories, up to March 29, 2006. Procedural Order No. 4 also ordered Union to provide answers to his Interrogatories within a specific time period.

Each procedural step in the process is time limited so as to ensure that the proceeding progresses at a rate which will allow the issues to be definitively dealt with, and so that rates for 2007 can be implemented on time. It is to be noted that Mr. Crockford asked for and received extensions of time throughout the process.

The Decision on the May 5, 2006 Motion

The deciding panel specifically found that Union had in fact answered the interrogatories posed by Mr. Crockford filed up to and including March 29, with the exception of a few. The responses to the few exceptions were not required because of the unreasonable effort it would take to answer them. As noted by the deciding panel, Rule 29 specifically provides for a refusal to answer on such grounds.

The panel also rejected Mr. Crockford's request for answers to a series of additional questions, which were posed outside of the time allotted to the interrogatory process. As noted earlier, Mr. Crockford had already been granted an extension for the filing of his interrogatories.

Almost all of the Interrogatories that fell into this category concerned the Winter Warmth Program. In this request for review, Mr. Crockford contends that the deciding panel erred in asserting that Union did not manage the Winter Warmth program. In his view this is an "error of law on the face of the record". In his view, Union is managing the program so as to improperly profit from it. Mr. Crockford's claim is that because ratepayers support the program they are entitled to know all of its detail.

The answer to this contention is that Mr. Crockford was given a full opportunity to ask his interrogatories. The Board found that the interrogatories he had posed were answered. What the Board denied him was an opportunity to ask a further round of interrogatories, which in the Board's view were new questions, not merely a request for further and better answers to the original slate of his interrogatories. The Board rejected those additional questions on the grounds that the Board's process allows for a single round of interrogatories, not serial opportunities. This aspect of the deciding panel's decision is consistent with the Board's interest in ensuring that the process is predictable and efficient. Mr. Crockford's allegations respecting the management of the Winter Warmth program should have been supported by his original interrogatories, or by evidence filed by him later in the process, which he did not do.

In his materials on this request for review, Mr. Crockford submits that the opportunity to ask interrogatories related to intervenor evidence somehow authorizes the filing of additional interrogatories for the Applicant. That is that the round of interrogatories directed to intervenor evidence somehow re-opens the opportunity to file further, additional interrogatories for the Applicant. This was not argued by Mr. Crockford until now. It is an argument that has no merit. The interrogatory processes for Applicant's

Intervenors' evidence is purposely staged so that the Intervenor evidence can be directed to the issues relevant to the Applicant's evidence, and the Applicant has a distinct symmetrical opportunity to test and explore intervenor evidence through interrogatories. It does not create a new opportunity for Intervenors to pose additional interrogatories.

Mr. Crockford asserts that the SPPA authorizes the Board to require a party to provide information at any time prior to the completion of the case. Once again, this was not argued before the deciding panel. The answer to this claim is that the SPPA authorization does not mean that the Board must make any such order. Fairness requires that the Board follows a reasonable procedure to enable parties to adduce the evidence relevant to the issues recognized within the proceeding. This was done in this case.

Mr. Crockford asserts that the Board's requirement that he provide a compelling case in support of his interrogatories is unreasonable and not supported by its rules. The answer to this claim is that in order for cases to proceed in an orderly manner, evidence must be relevant to the proceeding. Relevance is determined by reference to the issues list. This means that requests for information must relate to matters within the Issues List and be of assistance to the Board in deciding the matters it must decide in the case. The requests must also be reasonable. It is not reasonable to ask an applicant to redo its accounting methodology, the source of Mr. Crockford's complaint, without a clear demonstration that the resulting evidence would materially assist the Board in making the decisions necessary in the case. As the deciding panel found, so far from not being consistent with its Rules, Rule 29.01(b) of the Board's Rules specifically anticipates such a case as is presented here.

The Settlement Process

In addition to his concerns respecting the interrogatory process and its effect on the Settlement Conference and the resulting Settlement Agreement, Mr. Crockford asserts that he was not advised by the Board that the Settlement Conference was proceeding even in the face of his motion concerning the interrogatories, and that his failure to participate was attributable to the lack of notice. This assertion is not supported by the record. The record shows that Mr. Crockford had ample notice that the Conference was being held and that he chose not to participate. It was referenced in Procedural Order No. 1. There is nothing in the public record of any request to participate by telephone. It is also noteworthy that this concern was not mentioned by Mr. Crockford when he was addressing the Settlement Agreement in the course of the oral proceeding. Mr. Crockford's sole concern was the effect of the deciding panel's decision respecting interrogatories on the Settlement Agreement.

Mr. Crockford asserts that "none of his issues" were settled in the Settlement Conference. The answer to this contention lies in correspondence which establishes that all of Mr. Crockford's interrogatories were placed within the issues approved by the Board as part of the Issues List (Procedural Order No. 4). No intervenor has a slate of issues unique to itself. Issues find their way into the proceeding through their adoption by the Board as part of the Issues List. Accordingly, when the Board accepted the Settlement Agreement it accepted the settlement of each of the discrete issues reflected in it. Insofar as "Mr. Crockford's issues" were captured by the Issues List, his issues were settled when the Settlement Agreement was accepted.

Mr. Crockford asserts that the Settlement Agreement was accepted as the result of a vote or a popularity contest. This assertion is without foundation. The Settlement Agreement was accepted by the Board as representing a very broad consensus arrived at by parties representing a very broad cross section of interest and opinion. The

Agreement was accepted because it represented a reasonable and responsible resolution of the issues covered by it, which accorded with Board practice and policy.

Mr. Crockford also suggests that in accepting the Settlement Agreement, the Board has improperly delegated its authority to approve rates to the intervenors. This line of reasoning would preclude the settlement or resolution of all manner of matters before administrative tribunals and courts. The orderly exercise of the Board's statutory mandate is dependent on its ability to adopt and accept settlement proposals if they are reasonable. To be sure, such settlements must be supported by evidence, and must be consistent with Board policy and practice. A review of the Settlement Agreement shows that it is very clearly rooted in the evidence in the case. The Board accepted the Settlement Agreement, which was supported by a broad cross section of interests and opinion. The Board in accepting the Settlement Agreement is exercising its authority, not delegating it. To reject the Settlement Agreement on the basis proposed by Mr. Crockford would be to reject the comprehensive consensus arrived at, and require an obviously unnecessary oral proceeding costing many hundreds of thousands of dollars, all of which costs would likely be borne by ratepayers across the Union franchise area.

Mr. Crockford suggests that the fact that intervenors were not required to attend the Settlement Conference and were not advised that issues that an intervenor may be interested in may be settled denies the process validity. There is no reasonable obligation on the Board, and probably no authority in it, to require the attendance of a party at a settlement conference. Attendance at the Settlement Conference, while expected, is not mandatory. Parties who choose not to attend must accept the consequences of that choice. In this case, Mr. Crockford chose not to attend any portion of the Settlement Conference. Procedural Order No. 1, which provides notice of the Conference, gives a clear indication that its purpose is to resolve outstanding issues, and the fact that that occurred could not come as a surprise to him.

In the course of his submissions Mr. Crockford asserted that his rights pursuant to the Charter of Rights and Freedoms had been violated by the Board. Specifically he suggested that the Board's refusal to grant him costs in advance has denied him choice of counsel.

This assertion is without foundation.

Mr. Crockford's claim for costs in advance was predicated exclusively on self-representation. At no time has he ever suggested that he intended to retain counsel.

Without in any way wishing to decide or comment upon the extent to which Board processes attract the rights claimed by Mr. Crockford, or the prospect of success of such a claim should it be made in a different circumstance, Mr. Crockford's assertion in this case, and on this record, is definitively refuted.

Mr. Crockford also made allegations and purported to pose questions for Union respecting the so-called Garland case. Such assertions have no relevance for his request for review, and the Board has disregarded them.

Finally, Mr. Crockford appears to be seeking the production of documents respecting the settlement process. A Settlement Conference is conducted by the parties, and the Board panel is neither a participant nor privy to any of the discussions or documents exchanged at the Settlement Conference. In fact, the Board's Settlement Conference Guidelines specifically mandate that any admissions, concessions, offers to settle and related discussions be held in confidence by those participating in the Conference. Aside from the final settlement proposal itself, no documents or discussions held in a Settlement Conference are admissible in any Board proceeding. The Board therefore does not have access to the documents Mr. Crockford appears to be seeking.

Conclusion

For all of these reasons the Board concludes that Mr. Crockford has failed to present a compelling case to pass the threshold issue in Rule 45. In the Board's view, there is no case to answer, and the Board will not require any party to the proceeding to file responding material to Mr. Crockford's request for review. Mr. Crockford's request is denied.

DATED at Toronto, June 29, 2006.

Signed on behalf of the Panel

Original Signed By

_____

Paul Vlahos
Member

RCVD June 6, 2006

MH

June 3, 2006
Delivered by fax 1.416.440.7656
John Zych: Board Secretary
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, Ontario M4P 1E4

Dear Mr. Zych: 10 6/6

RE: BOARD'S DECISION DATED MAY 11, 2006 and BOARD'S DECISION TO ACCEPT SETTLEMENT AGREEMENT DATED MAY 23, 2006 – UNION GAS FILE EB-2005-0520

I acknowledge receipt of the Panel's decision dated May 11 and of its decision on May 23 to accept the settlement of issues based upon a popularity contest of intervenors involved in these proceedings. I request the Panel reconsider its decisions based on the following grounds. Firstly, the issues I have raised with respect to the Winter Warmth Program are not an appeal for assistance within the program, as the Panel alluded to, and they never have been. I do not qualify for assistance and never have, and there is no appeal available of a denial of assistance. I only applied in order to receive the eligibility requirements for this matter as Union Gas (Union) and the United Way/Red Cross were refusing to disclose the eligibility criteria.

As you know, Union has not provided proper responses and evidence to the writer's interrogatories and the Panel has exceeded its jurisdiction by refusing to have Union provide answers and evidence, thus, the Board has denied the writer natural justice. Board rule 29.01 uses the word "shall", and under section 29(2) of the *Interpretation Act* the word shall makes it "imperative" that Union provide answers. The word 'shall' is mandatory, not optional, and not in the discretion of the Board. The Panel failed to properly interpret its legal powers and failed to properly interpret relevant rules and statutes.

The Panel incorrectly states that Union is not managing the Winter Warmth program; thus, there is an error of law on the face of the record. Union entered into a contract with the United Way to simply screen customers but Union still manages the program, as screened customer applications are sent to Union for final approval. This is supported by Union's pre filed evidence. The customer is required to release Union, not the United Way, of any liability. A simple review of Union's evidence or inquiry by the Board would have confirmed these facts. The Board had Union's application and evidence in its custody for over 65 days and has asked no questions regarding the program despite its knowledge that the Board has not pre approved the program prior to its implemention. Union own pre-filed evidence evidences that Union is approving disconnected former customers who do not qualify for assistance, as they are not current customers, which is an eligibility requirement.

Union is unjustly enriching themselves by paying off bad debt Union has already written off. Union is now requiring customers to pay for the entire program thus involving every customer in this fraud. Given the barriers to assistance the funds will not be completely depleted and Union will recoup all unused funds at the end of the program that the customers have now funded.

Sixty Thousand Dollars ($937.50 per United Way x 32 United Ways x two years) of the 200,000 $ plan is being wasted on screening customers (50 eligible customers to date - $22,500.00 maximum awarded to date) when Union has in-house staff capable of doing the screening

In fact, Union's evidence depicts that Union has a Winter Warmth call center dealing with the program. Since customers are paying for this program, like it or not, customers have a right to know all details surrounding this scam. Since the Board operates at the pleasure of the province, and since the program is a scam, which the Board apparently approves, then the province is liable to the customers who are being forced to pay all costs of the program. Union cannot so much as change the wording on a bill without pre approval but the Board is permitting Union to set up and operate a scam without pre Board approval and without question. Mr. Simmon's testified that helping to control customer cost is a good thing, but apparently the Panel disagrees.

The Panel has further exceeded its jurisdiction by refusing to have Union reply to the writer's follow up questions dated April 27. Throughout the proceedings the Panel approved every undertaking requested by other intervenors. One approved undertaking provided to Mr. Dingwall was rescinded, but was originally approved.

There is another error on the face of the record, the Panel May 11 decision, as the Panel's decision states that the "Board's process does not and cannot accommodate a multi-staged interrogatory process in this proceeding". The Panel is incorrect. The Board's procedural Order dated February 24, paragraph 6, page 2, expressly articulates that "anyone" may request additional information related to 'any' intervenors filed evidence. "Anyone" includes an intervenor asking follow up questions of their own questions. This would include receiving clarity on questions asked or requiring the applicant to answer questions they failed to originally answer at all. As the Panel knows, other intervenors have already asked for additional information in this proceeding and have been provided answers by Union prior to the hearing commencing. To suggest only other intervenors can ask follow up questions of some other intervenors question is absurd, as this would encourage collusion between lawyers or intervenors in order to acquire the information sought. The word 'anyone' is synonymous to the word 'everyone' in the *Canadian Charter of Rights and Freedoms*, and the word 'everyone' in the Charter applies to everyone in Canada, including illegally landed persons, for example, and not just legally landed persons.

Moreover, section 5.4(1) of the *Statutory Powers and Procedures Act* (SPPA) authorizes the Board power to require Union to provide the information "at any stage of the proceeding before all hearings are complete..." Board rule 29.03 provides assistance to an intervenor when not satisfied with applicant's responses to interrogatories. Any timelines depicted in a procedural Order is simply a guideline and does not preclude additional questions after the timeline, which is evidenced by s. 5.4(1) of the SPPA. Amply available case law dealing with labour relation grievance procedure timelines, for instance, further evidence that timelines are nothing more than a guide. The fact that the Panel allowed further interrogatories during the hearing is the ultimate evidence to support this proposition.

In paragraph 3, page 3 of the Panel's May 11 decision, the Panel states very compelling argument rooted in the issue is required in order to have the applicant provide responses. The Panel states that since the writer did not provide a compelling argument the writer's request to have questions answered is denied. No such requirement exists, and the Panel is simply making up rules as the process proceeds. If such requirement existed they would've been cited in the Board's procedural Order, or in the rules, which the Board was obligated to point out in its Order since these proceedings permit laypersons to take part. The Board is aware the writer has never taken part in a Board proceeding before. Importantly, the Panel was aware the settlement conference was occurring at the very time they made their decision yet they chose to not notify the writer. Union has gone to great unreasonable effort, some 5000 pages worth, to attempt to justify the rate increases, however, at no time did Union claim they 'could not' determine the cost of maintaining a safe distribution system in each operating area, only the Panel states this in Union's defence.

As Union has separate operating areas the revenue and expenditures incurred in each area is relevant to this proceeding. The Board is allowing Union to bill customers costs when the Board has no idea of what the costs incurred even are, and apparently no interest in even finding out.

All of the information requested in the writer's original interrogatories and subsequent April 27 correspondence was required prior to this proceeding commencing. The Board February 24 procedural Order articulates protocol in a chronological order. The order is 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, not 1, 4, 5, 6, 2, 3, 7, 8, 9, 10, 11.

The Panel also states in paragraph 1, page 4 of its May 11 decision, that it accepts the practice of applicants answering multiple questions in one response, however, like it or not, Board rule 29.01(d) requires ('shall') an applicant to provide responses to each question on separate pages, thus there is yet another error law on the face of the record. The SPPA gives the Board the power to create its own rules and those rules have been created. The Panel is bound by these rules and simply because the Panel does not like the rules or procedural Orders does not give the Panel the power to ignore them, or to create its own paint by numbers rules in individual proceedings. The writer has not waived any rights or consented to any changes in procedural fairness. There is no indication in the SPPA that the legislature intended anything less than full compliance with the Act. Section 2 (e) of the Canadian Bill of Rights requires parties to be given a fair hearing in accordance with the principles of fundamental justice, and fundamental justice is synonymous with natural justice in administration law, thus the writer has been denied natural justice.

Importantly, the Board failed to provide a decision regarding the writer's additional information sought from Union. The request was made on April 27. The Board delivered a decision on May 11. However, the Board conducted the settlement hearing on May 1 through 12 without the writer who was waiting for Union's responses. The Board failed to deliver its decision in a timely manner and provided no notice that the hearing was going to occur anyway. Prior to April 27, the writer had telephone conversations with Board counsel, Mr. Millar, and the writer informed Mr. Millar that he was requesting to take part in the settlement conference by way of telephone conference call. Mr. Millar advised that this would be acceptable and to put the request in writing, which the writer did prior to the conference commencing. The writer relied upon what Mr. Millar told him, however, the Board failed to approve the request until May 16, eleven days after the hearing began and four days after it concluded.

Furthermore, on May 23, the Board accepted settlement of certain issues in favour Union. None of the writer's issues were settled, as depicted in the settlement agreement, and the Panel refused to allow the writer to present his case during the hearing, as the panel claimed the writer's issues were settled by the settlement agreement. The Board assigned every intervenors issues an issue number within an issue category. The Board failed to assign the writers issues an issue number and nowhere within the settlement agreement have the writer's issues been settled. The writer was also not provided copies of many other intervenors documents throughout the entire process, and all of the above amounts to a denial of natural justice.

The Board has further accepted the settlement agreement based upon a popularity contest of the party's who support Union, and who for the most part are not even Union customers or subject to the rate increasing they approved. However, since the settlements are based upon majority in favour, then the Board's ruling to accept the majority vote is invalid as the Board ensured few customers would intervene by incorrectly posting the hearing participation requirements when the Board posted public notice of this proceeding in newspapers. Thus these entire proceedings are invalid.

There is simply no evidence within the SPPA or the OEB Act that permits the Board to allow intervenors to become the Jury. Since the Board assumes majority vote rules with respect to settlement, simply having hundreds of customers intervene on future applications will defeat this process, thus making settlement hearings irrelevant. And this is the very root reason the Fiberal government controlled Board deliberately misinformed the public of the hearing participation requirements. The Panel further accepted settlement and ignored the principles set out in the case law Union presented, which clearly stated that a proper discovery is required prior to any settlement occurring, when parties oppose the settlement. A proper discovery has not taken place in these proceedings and the Panel has exceeded its jurisdiction, and once again, misinterpreted its powers and the relevant case law submitted.

Moreover, the Board's February 24 procedural Order did not even require intervenors to attend the settlement conference, as it was optional, and nowhere does the Order state that should you not attend your issues will be signed away, therefore, the Board failed to properly provide adequate information. Further still, the writer is a property owner and ratepayer in Sudbury. In this proceeding the city of Sudbury is represented by Mr. Scully (FONOM) and his services are being paid with Sudbury ratepayer funds, i.e. the writer's property taxes. Mr. Scully has voted in favour of settlement on behalf of the city of Sudbury, which is a direct conflict with the position of the writer. In other words, I have voted to accept the settlement and sign away my issues through Mr. Scully vote, when in reality, I have at no time accepted the settlement.

The Board opened the 'other issues' category and that is where most of the writer's issues fall, which has been accepted by the Board and Union, as evidenced in Union's responses to the writer's interrogatories. Not one of the writer's issues have not been settled in this matter, as evidenced by the issue numbers that were settled in the settlement agreement.

The Board and the panel have not acted in good faith with respect to the decisions rendered against the writer, thus, the Panel members are provided no liability protection under the OEB Act. A rule is a rule and a right is a right. The law is black or white or it is not law. Yes or no, legal or illegal, proper procedure or back to go. At law one is either liable or not liable. The Act is designed to protect customer's interests, not gas companies' profits. Union claims there is an $5 million $ deficiency in 2007. The Board has accepted a 24 million $ increase without requiring Union to justify at a hearing that the increase are reasonable. The onus is upon Union to justify the increase, as depicted in section 36 (6) of the Act. This justification is required to be made by the Board and not by intervenors. The Board will determine the remaining 61 million $ request, however, should Union's 2007 profit be greater than its 2006 profit than no deficiencies were realized in 2007, and ultimately, the intervenors and the province will be liable as a result of the needless rate increase they approved in this proceeding. The errors of the Board and Panel amount to errors of law in the interpretation, administration and application of the relevant, Acts, Board rules, evidence and submitted case law.

The writer requests the Board reconsider its decisions and Order Union to provide answers and evidence in the correct fashion required by the Board's rules to every question posed by every party at anytime. The writer further requests that the decision to accept the settlement agreement be rescinded and no decision be rendered in these proceedings on any issues until the writer has received Union's replies and a reasonable amount of time has been provided to writer to review the information requested, and, additionally, that the Board then reconvene these proceedings to allow the writer to make out his case on the issued raised in this entire proceeding.

Furthermore, The writer has no income, and under the SPPA the writer is entitled to counsel.

Given the Board's repeated abuse of authority and refusal to approve the writer cost statements in advance as requested, and as permitted, which would allow him to retain counsel, the writer requested counsel of his own selection be provided under section 7 of the *Canadian Charter of Rights and Freedoms*. The Supreme Court has held that the link to the judicial system does not mean that section 7 is limited to purely criminal or penal matters. The evidence in this matter amply demonstrates that the writer and customers he represents have been deprives of rights guaranteed under the *charter* and the government is obligated to do whatever is required to ensure the process is fair and that the writer and his clients be adequately represented, therefore, the government has a constitutional obligation to provide state funded counsel given the particular circumstances of this case. In circumstances where the absent of counsel results in an unfair process or appeal the appropriate remedy is under section 24 of the *charter* in that the government must provide state funded counsel through whatever means the government wish, be it the Attorney General's budget, the consolidated funds of the province or the budget of legal aid, but it must be provided. As such this correspondence and counsel request is being forwarded to the Attorney Generals of Ontario and Canada.

In the meantime, please issue a decision on this reconsideration request, and, as the regulatory body over utility companies, the writer requires the Board to furnish the following. Please provide the dates and method the Board used to notify all utility customers that they had been charged criminal interest rates and were entitled to restitution after the *Garland* case was rendered?

From documents submitted in this proceeding it appears Union has settled its class action claims regarding the criminal interest rates and is now seeking Board approval to distribute excess funds. However, a class action involves all customers of Union and the action cannot be settled without consent of all party's on whose behalf the claim was filed. This was not done. Therefore, the writer requires all details and copies of all documents surrounding the settlement that are within the Board's knowledge or custody.

The writer further requires copies of all documents of any kind and nature that were exchanged during the settlement conference that allegedly settled the writer's issues that were advanced on behalf of all Union customers in Ontario.

Kind regards,

M Crockford

Marc A. Crockford

cc. Union Gas by fax
Attorney General in Right of Ontario and Canada by regular Post