



RP-2003-0063

**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, 2004.

### **DECISION ON COSTS**

On March 18, 2004, the Board issued its Decision With Reasons in the RP-2003-0063 proceeding. In this Decision, the Board stated:

“The Board was assisted in the course of the hearing by the intervenors, many of whom have made cost submissions. The Board will issue a cost award decision shortly, identifying the percentage recovery established for each intervenor requesting costs.”

The Board received cost submissions from the following intervenors eligible to apply for cost awards:

- Energy Probe
- Vulnerable Energy Consumers Coalition (“VECC”)
- Ontario Public School Boards’ Association (“School Boards”)
- Consumers Association of Canada (“CAC”)
- Ontario Association of School Business Officials (“Schools”)
- Canadian Manufacturers & Exporters (“CME”)
- Industrial Gas Users Association (“IGUA”)

- London Property Management Association (“LPMA”) / Wholesale Gas Purchasers Service Group (“WGPSG”) 15
- Green Energy Coalition (“GEC”) 16
- Ontario Association of Physical Plant Administrators (“OAPPA”) 17
- The Heating, Ventilation, Air Conditioning Contractors Coalition Inc. (“HVAC”) 18

On February 11, 2004, Union Gas Limited (“Union”) wrote the Board to object to the cost claims made by School Boards, Schools, and Energy Probe. The Board received reply submissions from School Boards, Schools, and Energy Probe. This Decision deals first with the cost claims of School Boards and Schools, secondly with the cost claim of Energy Probe, thirdly with the claims of all other intervenors, and finally with the Board’s costs. 19

**School Boards and Schools** 20

School Boards and Schools both applied for intervenor status in the RP-2003-0063 proceeding. On June 19, 2003, counsel for Union wrote the Board objecting to School Boards and Schools both being granted intervenor status on the grounds that both organizations represent the same interest, customers, and concern. On Issues Day, July 11, 2003, the Board heard submissions on this matter from School Boards and Union. The Board allowed both organizations intervenor status but added that the total of their costs should be “equivalent to the representation of one lawyer.” (Para. 132). By letter dated July 22, 2003, the Board confirmed both party’s standing, reminding them that “[y]our cost entitlement is as described by the Board in its oral Decision at the Issues Conference on July 11, 2003.” 21

In response to cost claims submitted by Schools and School Boards at the conclusion of the proceeding, Union’s counsel objected (letter dated February 11, 2004), arguing that the claims submitted were excessive and, therefore, not in conformance with the Board’s decision. Further, Schools’ claim disregarded the Board’s decision, arguing for recovery of all its costs. 22

The Board received written submissions responding to Union’s objections from School Boards (February 11, 2004) and Schools (February 17, 2004). School Boards argued that while there was little duplication between its interrogatories and cross-examination and those of Schools, there was duplication in the arguments of School Boards and Schools. School Boards added that the cost claims of School Boards (\$146,974) and Schools (\$133,540) were both below the average claims of the other all issues intervenors (\$148,870). With respect to expenses, School Boards suggested that both organizations be awarded full recovery because their total expenses claimed were less than the average. With respect to fees, School Boards proposed that the two organizations be granted a percentage of the average intervenor claims, based on the percentage of each organization’s claim of the total of the two organizations’ claim. Schools argued for full cost recovery based on historic Board practice, the efforts it undertook to avoid duplication, and its contributions during the proceeding. 23

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The Board notes that Schools and School Boards were both of great assistance to the Board on a wide variety of issues in this proceeding. With respect to disbursements, the Board orders that full recovery of the eligible costs of Schools and School Boards, as assessed by the Cost Assessment Officer be awarded. However, the Board notes that the total claim for the two organizations, 1,402 hours and \$271,733, was almost three times the claim made by IGUA and LPMA/WGSPG, also all-issues intervenors, who were also of great assistance to the Board through their participation. The Board therefore finds that the expenses claimed by Schools and School Boards do not comply with the Board's July 11, 2003 finding. The Board finds that both parties be awarded 50% of their reasonably incurred fees.

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The Board orders that the eligible costs of Schools and School Boards, as assessed by the Cost Assessment Officer, shall be paid by Union Gas Limited upon receipt of the Board's Cost Orders.

### 26 **Energy Probe**

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Union objected to Energy Probe's cost claim arguing that in relation to other intervenors, the scope of Energy Probe's intervention did not justify the claimed hours and its costs claim, which was the second highest of all claims made.

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Energy Probe submitted that it had represented itself similarly in many recent proceedings, yet had never previously had the scope of its intervention questioned by Union. Energy Probe argued that it had conducted extensive and useful cross-examination with respect to the pension issue, uncovering material of benefit to the Board.

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The Board notes that Energy Probe's participation was of assistance to the Board. Therefore, the Board orders that Energy Probe be awarded 100% of their reasonably incurred fees and 100% of reasonably incurred expenses, as determined by the Cost Assessment Officer.

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The Board orders that the eligible costs of Energy Probe, as assessed by the Cost Assessment Officer, shall be paid by Union Gas Limited upon receipt of the Board's Cost Orders.

### 31 **All Other Intervenors**

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The Board was greatly assisted by the contributions of these parties and awards them 100% of their reasonably incurred costs, subject to assessment by the Cost Assessment Officer.

### 33 **The Board's Costs**

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The Board's costs of and incidental to this proceeding shall be paid by Union Gas Limited upon receipt of the Board's invoice.

**ISSUED** at Toronto, May 14, 2004.

ONTARIO ENERGY BOARD

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Paul B. Sommerville  
Presiding Member  
on behalf of the Hearing Panel