



EB-2009-0166

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 its 2010 Demand
Side Management Plan

BEFORE: Paul Sommerville
Presiding Member

Cynthia Chaplin
Member

DECISION AND ORDER ON COST AWARDS
Revised

Union Gas Limited ("Union") has filed an application with the Ontario Energy Board (the "Board") dated June 1, 2009 seeking an order granting approval of its 2010 Natural Gas Demand Side Management ("DSM") plan. The Board assigned File No. EB-2009-0166 to this application.

The Consumers Council of Canada ("CCC"), Canadian Manufacturers & Exporters ("CME"), Energy Probe Research Foundation ("Energy Probe"), the Green Energy Coalition ("GEC"), Industrial Gas Users Association ("IGUA"), Low Income Energy Network ("LIEN"), the London Property Management Association ("LPMA") and Pollution Probe received intervenor status and were granted approval to apply for an award of costs in this proceeding. Union Gas Distribution Inc. ("Union"), Direct Energy and the City of Kitchener requested intervenor status and indicated they were not seeking an award of costs.

The Board issued its Decision and Order on September 30, 2009, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by Union.

The Board received cost claims from CME, CCC, GEC, IGUA, LPMA and LIEN. Energy Probe and Pollution Probe did not file any cost claims.

Union filed a letter stating that it had no objection to LPMA's, CME's, GEC's, IGUA's and CCC's cost claims but noted that LIEN's cost claim appeared to be disproportionately high when compared to other intervenors.

On November 5, 2009, LIEN responded to Union Gas' comments and stated that it participated actively and responsibly throughout the proceeding by reviewing evidence, preparing interrogatories exclusive of low-income issues and preparing submissions.

Board Findings

The Board has reviewed the cost claims filed by CME, CCC, GEC, IGUA, LPMA and LIEN.

The Board finds CME, CCC, GEC, IGUA and LPMA are eligible for 100% of their reasonably incurred costs of participating in this proceeding. The Board finds that each party's claims are reasonable and will be reimbursed by Union.

The Board finds that LIEN's claim is excessive in the circumstances. Its claim for \$8,785 in fees is almost four times as high as the average claim for fees of \$2,228 for the other 5 intervenors. A comparison to the average is not a determinative factor of reasonableness, but is an indication of reasonableness. A claim which is almost four times the average may be reasonable in certain circumstances, for example if the intervenor took a larger role than others in the proceeding or provided expert testimony or otherwise distinguished itself in the proceeding. There are no such circumstances in this proceeding. This proceeding dealt with Union's 2010 DSM program, *excluding* low-income programs. LIEN's submissions were limited in nature and largely adopted the submissions of other parties. The Board finds that the contribution provided by LIEN to the proceeding does not warrant an award of costs beyond that of the average or the other participants.

LIEN will be awarded costs for fees to the level of the average of other participants, \$2,228. LIEN will also be awarded its claim for disbursements.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Union shall immediately pay:
 - Canadian Manufacturers & Exporters \$3,966.90;
 - Consumers Council of Canada \$1,905.75;
 - Green Energy Coalition \$2,228.53;
 - Industrial Gas Users Association \$1,911.27;
 - London Property Management Association \$1,227.08; and
 - Low Income Energy Network \$2,381.40.

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

DATED at Toronto, January 7, 2010

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary