



**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**

Union Gas Limited ("Union") filed an application with the Ontario Energy Board (the "Board") dated October 15, 2009, seeking an order granting approval of its 2010 low-income Natural Gas Demand Side Management ("DSM") plan. The Board assigned File No. EB-2009-0166 to this application.

This application was in response to a request from the Board on September 28, 2009, for Union and Enbridge Gas Distribution Inc. to file one year low-income DSM plans for 2010 based on the existing DSM framework, including budget increases based on the established escalators.

On September 30, 2009, the Board issued its Decision and Order approving Union's originally filed application for its 2010 DSM plan. That plan did not include the low-

income component. The Board decided to hear the current application as a second phase to the proceeding. The Board stated that it would only be addressing the one year low-income DSM plan; all other matters related to the 2010 DSM plan had been addressed in the first phase.

On October 26, 2009, the Board issued Procedural Order No. 2 which directed Union to serve a copy of its low-income DSM plan application on all intervenors in the current 2010 DSM plan proceeding, all intervenors in the Generic DSM Proceeding (File No. EB-2006-0021) and all parties in the DSM Guidelines proceeding (File No. EB-2008-0346). In response to Union serving a copy of its 2010 low-income DSM plan on these sets of parties, no new requests for intervenor status were received. Parties who were previously approved to be intervenors in Phase I of the 2010 DSM plan proceeding remained eligible to participate in Phase II.

The Board issued its Decision and Order on December 14, 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 the Canadian Manufacturers & Exporters ("CME"), the Consumers Council of Canada ("CCC"), Energy Probe Research Foundation ("Energy Probe"), the London Property Management Association ("LPMA") and Low Income Energy Network ("LIEN").

On January 13, 2010, Union Gas filed a letter stating that it has reviewed the intervenor cost claims for the low-income portion of the EB-2009-0166 proceeding and has concerns with the cost claim of LIEN. Union was concerned with the number of hours claimed and the amount of resources utilized to review an application four pages in length.

On January 19, 2010, LIEN responded to Union Gas' comments and stated that:

"LIEN is the Low Income Energy Network. This is Union Gas' Low Income DSM Proceeding. It is entirely consistent with LIEN's intervention, participation and mission for it to have taken a substantially greater interest and involvement in this proceeding than the other intervenors, individually or even collectively. The average of other intervenors hours is an extremely limited and distorting indication of whether an intervenor's

costs are reasonable in general and consistent with the Board's practice direction in particular.”

## **Board Findings**

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

The Board finds that CME, CCC, Energy Probe 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 has decided to award LIEN \$2,000 for this proceeding. This reduction is consistent with the Board's findings in its recent decisions with respect to LIEN's costs awards (EB-2008-0106, EB-2009-0154 and EB-2009-0166). In those Decisions the Board found that LIEN's costs were excessive and not commensurate with its contribution in the effected cases. LIEN brought motions to review these Decisions, and the motions were denied at the threshold stage. In this case LIEN's claims are substantially higher than any of the other intervenors. Such significantly higher costs could only be justified if LIEN's participation in the case, including its filings, provided like value in enhancing the Board's understanding of the issues. In this case, the Board has awarded somewhat more than the average of the other costs claimants in light of the fact that the subject matter was of particular relevance to LIEN. 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 \$ 597.45;
- Consumers Council of Canada \$1,905.75;
- Energy Probe Research Foundation \$1,221.31;
- London Property Management Association \$ 346.50; and
- Low Income Energy Network \$2,054.46.

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, April 22, 2010

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary