



EB-2008-0154

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 amending or varying the rate or rates charged to customers as of July 1, 2008.

AND IN THE MATTER OF an Application by Union Gas Limited for an order or orders amending or varying the rate or rates charged to customers as of July 1, 2007.

AND IN THE MATTER OF Rules 42, 44.01 and 45.01 of the Board's *Rules of Practice and Procedure*;

BEFORE: Cynthia Chaplin
Presiding Member

Paul Vlahos
Member

Paul Sommerville
Member

DECISION AND ORDER ON COST AWARDS

Background

On June 3, 2008 the Ontario Energy Board (the "Board") issued its Decision in relation to an application by Union Gas Limited ("Union") seeking approval for final disposition and recovery of certain 2007 year-end deferral account balances. The Board assigned the application file number EB-2008-0034.

On June 23, 2008, Union filed a Motion to review the Board's 2007 Deferral Account Decision with respect to Account 179-72. In its motion, Union requested a review of the

2007 Deferral Account Decision, on the basis that it was, in Union's view, inconsistent with the NGEIR Decision and the 2006 Deferral Account Decision. Union also requested that if the Board found that the 2007 Deferral Account Decision is not inconsistent with the NGEIR Decision, there be a review of the 2006 Deferral Account Decision, on the basis that it was, in Union's view, inconsistent with the 2007 Deferral Account Decision. The Board assigned the application file number EB-2008-0154.

The Canadian Manufacturers & Exporters ("CME"), the School Energy Coalition ("Schools"), City of Kitchener, the London Property Management Association ("LPMA"), and the Industrial Gas Users Association ("IGUA") received intervenor status and were deemed eligible to apply for an award of costs.

The Board issued its Decision on the Motion to review on October 23, 2008, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by Union. In its Decision, the Board also asked parties to address the question as to how the costs associated with the motion to review should be accounted for, and specifically whether Union's shareholders should bear the costs.

The Board received cost claims from CME, LPMA, IGUA and Schools.

CME, LPMA and IGUA submitted cost claims by the November 7, 2008 deadline specified in the Decision on Motion. Schools filed its cost claim on November 11, 2008. CME and LPMA submitted that all of Union's external and allocated internal costs should be charged to Union's shareholders while IGUA submitted that all or a part of the costs should be allocated to the shareholders. Schools did not address the issue of how costs should be accounted for in their cost claim.

In a letter dated November 24, 2008, Union responded that it has no objections to the amount of costs being claimed by CME, LPMA or IGUA. Union also submitted that all costs of the motion should be included in Union's regulated cost of service and not charged to Union's shareholders. Union submitted that although the reviewing panel found that Union's motion did not meet the threshold for review, the Decision on the Motion did provide direction to Union on the proper method of calculating the balances in the deferral account. Union maintained that its decision to seek a review of the 2006 and 2007 Deferral Account Decisions was a reasonable exercise on the part of their management to bring forward to the Board issues that impact the calculation of regulated rates.

Board Findings

The Board accepts the cost claim filed by Schools notwithstanding that it was filed after the deadline specified in the Decision on Motion.

The Board finds that all parties 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 should be reimbursed by Union.

The Board will not require that Union's shareholders bear the costs of this proceeding. The Board has concluded that while the Motion sought relief which would have benefited Union's shareholders exclusively, it was brought in good faith with a view to clarify an important decision that had material consequences for the utility.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Union shall immediately pay:
 - CME \$8,194,20;
 - SEC \$2,807.00;
 - LPMA \$1,126.13; and
 - IGUA \$3,669.60.

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, December 16, 2008

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary