



**EB-2010-0039**

**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 October 1, 2010;

**AND IN THE MATTER OF** relief sought by Union Gas Limited for an order deferring the disposition of amounts in deferral accounts 179-121 and 179-122 until sale of the St. Clair Line has closed or the project is cancelled.

**BEFORE:** Paul Sommerville  
Presiding Member

Marika Hare  
Member

## **DECISION AND ORDER ON COST AWARDS**

### **Background**

Union Gas Limited ("Union") filed an application with the Ontario Energy Board (the "Board") on April 22, 2010 to address the disposition of 2009 deferral accounts and Market Transformation Incentive amounts, the 2009 earnings sharing amount and the allocation of costs between Union's regulated and unregulated storage operations. The Board assigned File Number EB-2010-0039 to the application.

On June 1, 2010, the Board issued Procedural Order No. 1, granting the following parties intervenor status:

- Consumers Council of Canada (“CCC”);
- Canadian Manufacturers & Exporters (“CME”);
- City of Kitchener;
- Enbridge Gas Distribution Inc;
- Energy Probe Research Foundation (“Energy Probe”);
- Federation of Rental-housing Providers of Ontario (“FRPO”);
- Industrial Gas Users Association (“IGUA”)
- London Property Management Association (“LPMA”);
- School Energy Coalition (“SEC”);
- Shell Energy North America (Canada) Inc.; and
- Vulnerable Energy Consumers Coalition (“VECC”).

The Board granted cost award eligibility to CCC, CME, Energy Probe, FRPO, LPMA, IGUA, SEC and VECC. City of Kitchener, Enbridge Gas Distribution Inc. and Shell Energy North America (Canada) Inc. did not request cost awards.

In the oral hearing held on April 6, 2011, the Board set out the process for intervenors to file their cost claims and respond to any objections raised by Union. Cost claims were submitted by CCC, CME, FRPO and IGUA.

Union replied to cost claims by filing two letters. In a letter dated May 24, 2011, Union raised no issues on the claims filed by CCC or FRPO. However, Union noted that CME’s cost claim includes approximately \$20,000 for argument incurred after the April 6, 2011 hearing. Union noted this amount would be significant in any hearing, but particularly in this hearing when parties had been advised to be prepared to argue orally at the hearing. Union submitted that close to half the time spent on argument was claimed after the Board deadline of April 15, 2011, after submissions of Board staff, CCC and FRPO. Union concluded that the Board should consider this timing in its review of the cost claim. In a second letter, dated June 1, 2011, Union commented that it had no concerns with IGUA’s cost claim.

On May 25, 2011, the Board issued its Decision and Order stating that it would be issuing its cost awards decision in due course.

On May 26, 2011, CME, replied to Union’s comments. To address Union’s issue about the time spent on argument after the April 6, 2011 hearing, CME indicated that at the conclusion of the hearing, the Board directed that written arguments be filed by intervenors, followed by written reply argument from Union. CME noted that the time

spent on preparing written argument was necessary to provide the complete factual context, along with supporting references. This was done, in part, to assist the Board, having regard to the fact that the Board members hearing this case were not involved in the hearing of matters pertaining to the Board's prior decisions in EB-2008-0411 and EB-2009-0422 proceedings. CME also noted that CCC and FRPO were relying on CME to provide the detailed factual context in CME's written submissions. CME concluded that it would be unfair and unreasonable to award CME less than one hundred percent of its reasonably incurred costs of participating in this proceeding.

Also on May 26, 2011, FRPO filed a letter which supported the submissions of CME and indicated that he chose to leave the majority of legal issues, especially matters such as Board jurisdiction, in the capable hands of a lawyer with the depth and scope of experience of Mr. Thompson (counsel for CME). FRPO believed this would provide ratepayers with the most cost effective representation and the level of FRPO's time involvement in these proceedings was reflective of FRPO's reliance on counsel for CME's expertise.

CCC also filed a letter dated May 26, 2011 in which it confirmed that CCC relied on CME for the factual context for CCC's written submissions. CCC relied on the transcripts of hearings that arose as a direct result of the positions taken by CME. CCC concluded that it limited the scope of its argument on the assumption that CME, in its written argument, would set out in detail the factual context for the issues.

### **Board Findings**

The Board finds that CCC and FRPO are eligible for 100% of their reasonably incurred costs of participating in the proceeding and should be reimbursed by Union.

Due to a calculation error, IGUA's cost claim has been adjusted to \$4,623.16.

With respect to CME, the Board notes that its costs are significantly above those of the other intervenors. However, the Board also notes that CCC and FRPO indicated that they relied on CME to take the lead on a number of issues resulting in efficiencies in this hearing proceeding. The Board was assisted by CME's participation in this proceeding and awards it 100% of its reasonably incurred costs.

**THE BOARD THEREFORE ORDERS THAT:**

1. Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, Union shall immediately pay:

- Canadian Manufacturers & Exporters \$66,113.24;
- Consumer Council of Canada \$ 8,353.88;
- Federation of Rental-housing Providers of Ontario \$14,580.65; and
- Industrial Gas Users Association \$ 4,623.16.

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, June 15, 2011

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary