



EB-2008-0273

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c.15 (Schedule B);

AND IN THE MATTER OF cost awards related to an
application by Union Gas Limited to reduce its financial
exposure in regard to contracts with Natural Resource
Gas Limited.

BEFORE: Gordon Kaiser
Presiding Member

Cathy Spoel
Member

DECISION AND ORDER ON COST AWARDS

Union Gas Limited (“Union”) filed an application with the Ontario Energy Board (the “Board”) on August 1, 2008, as amended on October 9, 2008 and as further amended on October 15, 2008 pursuant to sections 23 and 36 of the *Ontario Energy Board Act 1998*, S.O. 1998, c.15. The Board assigned the application file number EB-2008-0273.

Integrated Grain Processors Co-operative Inc. (“GPC”) and the Town of Aylmer (the “Town”) filed requests for intervenor status and cost eligibility on September 23 and 25, 2008, respectively. The Board confirmed their intervention status and cost eligibility on October 9 and October 10, 2008, respectively.

On October 15, 2008, the Board held an oral hearing for the Issues Day, and on October 16, 2008, the Board issued its Procedural Order No.1 indicating that an oral hearing will be held in Aylmer on October 20, 2008 and also attached to that Procedural Order No.1, the approved issues list for this proceeding.

The oral hearing was held in the Town of Aylmer on Monday, October 20, 2008, and the Board's Decision and Order was issued on November 27, 2008. On December 8, 2008 the Board sent a letter to IGPC and the Town of Aylmer, outlining the procedural steps for processing cost claims. IGPC and the Town of Aylmer filed their cost claims on December 15, 2008, and NRG made a submission on December 22, 2008 in regard to these two cost claims. IGPC and the Town of Aylmer filed Reply Submissions on December 29, 2008.

COST CLAIMS

(1) IGPC's Cost Claim

IGPC submitted cost claims for preparation of evidence and for hearing attendance for Dennis O'Leary and Scott Stoll, counsel for IGPC and for disbursements. The following is summary of Form 1 of the "Counsels' Cost" and Form 2 for "Disbursement".

Dennis O'Leary	Hours	Hourly Rate	Subtotal	GST
Preparation	23.6	\$ 330	\$7,788.00	\$389.40
Oral Hearing	5.0	\$330	\$1,650.00	\$82.50
Totals for D. O'Leary (a)	28.6	\$330	\$9,438.00	\$471.90
Scott Stoll				
Preparation	21.2	\$ 230	\$4,876.00	\$243.80
Issues Day	2.0	\$230	\$460.00	\$23.00
Oral Hearing	5.0	\$230	\$1,150.00	\$57.50
Totals for S. Stoll (b)	28.6	\$230	\$6,486.00	\$324.30
Disbursements				
Telephone			\$3.29	\$12.50
Accommodation			\$262.50	\$5.86
Meals			\$147.70	\$5.86
Other (Mileage)			\$257.14	\$12.86
Other (Binding & Tabs)			\$31.50	\$1.58
Total Disbursements (c)			\$702.13	\$32.95
Total of[(a)+(b)+(c)]			\$16,626.13	\$829.15

Total Cost Claim of IGPC = \$16,626.13 + \$ 829.15 (GST) = **\$ 17,455.28**

(2) Town of Aylmer's Cost Claim

The Town of Aylmer submitted cost claims for preparation of evidence and for hearing attendance for Philip Tunley, counsel for the Town of Aylmer, and for disbursements. The following is summary of Form 1 of the "Counsel' Cost" and Form 2 for "Disbursement".

Philip Tunley	Hours	Hourly Rate	Subtotal	GST
Preparation	15.3	\$ 330	\$5,049.00	\$252.00
Oral Hearing	7.0	\$330	\$2,310.00	\$116.00
Totals for P. Tunley (a)	22.3	\$330	\$7,359.00	\$368.00
Disbursements				
Photocopies			\$19.50	\$0.98
Printing			\$337.28	\$16.86
Courier			\$24.86	\$1.24
Travel:Car			\$201.47	\$10.07
Accommodation			\$367.50	\$18.38
Total Disbursements (b)			\$950.61	\$47.53
Total of[(a)+(b)]			\$8,309.61	\$415.53

Total Cost Claim of the Town of Aylmer = \$8,309.61 + \$ 451.53 (GST) = **\$ 8,725.14**

NRG's SUBMISSION RE: INTERVENORS' COST CLAIMS

NRG argued in its December 22, 2008's submission that no cost should be ordered since it was successful in defeating the Union application. In addition, NRG argued that the evidence of both IGPC and the Town of Aylmer was not relevant to the application brought by Union Gas. NRG also argued that both IGCP and the Town attempted to use the hearing for collateral purposes that were unrelated to the Union application. NRG stated that at the Board's suggestion, both IGPC and the Town of Aylmer agreed that their evidence would not be referred to. NRG argues that this acknowledges that the evidence was irrelevant.

NRG's Proposed Cost Awards

NRG proposed that if costs are to be awarded to the two intervenors, those costs should be limited to the costs of attending the Issues Day on October 15 and the

hearing on October 20, and should be restricted for one counsel for each of IGPC and the Town of Aylmer. NRG's proposed costs are summarized below.

IGPC	Hours	Hourly Rate	Subtotal	GST	Total
Dennis O'Leary (attendance at hearing)	5	\$ 330	\$1,650.00	\$82.50	\$1,732.50
Scott Stoll(attendance at Issues Day)	2	\$230	\$460.00	\$23.00	\$483.00
Disbursements					\$702.13
Total for IGPC					\$2,917.63
Town of Aylmer					
Philip Tunley (attendance at hearing and Issues Day)	9	\$330	\$2,970.00	\$148.50	\$3,118.50
Disbursements					\$950.61
Total for Town of Aylmer					\$4,069.11

REPLY SUBMISSIONS

Town of Aylmer

The Town argued that the Board in its Decision and Order in this matter dated November 27, 2008, at pp. 6-7, has already determined that: (a) NRG's conduct in this matter resulted in significant costs for the Town; (b) the Town shall be entitled to its reasonably incurred costs of this proceeding and such costs are to be paid by NRG; and (c) the costs being paid shall be borne by NRG's shareholder.

The Town also indicated that the Board declined to exclude the Town's evidence at the hearing, despite NRG's request that it do so. In that context, the Board specifically acknowledged that the Town's evidence was potentially relevant to issue #6, as defined by agreement of NRG at the Issues Day, concerning the impact of the matters in issue on rates.

IGPC

IGPC disagreed with NRG's submissions. IGPC noted that it is the largest NRG ratepayer and has a legitimate concern about the financial health of NRG and, by

necessary implication, the security of the supply of natural gas distribution service. IGPC also pointed out that its evidence was concise and focused on the very issue that NRG specifically required to be included on the "Issues List" namely, the potential ratepayer impacts of additional financial security obligations of NRG.

IGPC pointed out that at Issues Day, the Board characterized the ratepayer impact as a "second order question". The first order question was the financial status of NRG and the appropriate financial assurance that NRG ought to provide to Union Gas. IGPC accepted to Board's proposal to deal with the evidence if and when the proceeding dealt with the potential impact on the ratepayer.

BOARD FINDING

The Board reviewed the submissions and reply arguments of IGPC, the Town of Aylmer as well as NRG's argument justifying its proposed cost awards for the two intervenors.

In regard to IGPC's cost claim, the Board finds that its prefiled evidence was focused on its financial interest in the allocation of any costs that NRG may incur. However, the Board finds that the total hours spent on this proceeding (57 hours) to be excessive given the nature of the proceeding. Although the comparison serves as only a rough guide, the Board notes that IGPC's cost claim is more than twice as large as that of the Town of Aylmer. The Board also agrees with NRG's submission that the attendance at the hearing of two counsel for IGPC was not necessary. The Board will therefore disallow a total of 14 hours from IGPC's cost claim. This amounts to a reduction of \$4,116.00 from the total claimed amount of 17,455.28, and a total approved cost award of \$13,339.28.

In regard to the Town of Aylmer's cost claim, the Board finds the claim to be reasonable and it is approved in its entirety.

The Board determined in its Decision dated November 27, 2008 that NRG will be responsible for the Board's cost for the oral hearing on October 15, 2008 for the Issues Day as well as for the oral hearing in Aylmer on October 20, 2008.

THE BOARD THEREFORE ORDERS THAT:

Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, Natural Resource Gas Limited shall immediately upon receipt of this Decision and Order on Cost Awards pay:

- (1) the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice;
- (2) the Integrated Grain Processors Co-operatives Inc. the sum of \$ \$13,339.28; and
- (3) the Town of Aylmer the sum of \$ 8,725.14.

DATED at Toronto, January 21, 2009

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary