



**EB-2008-0220**

**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 or fixing just and  
reasonable rates and other charges for the sale,  
distribution, transmission and storage of gas effective  
January 1, 2009.

**BEFORE:** Pamela Nowina  
Vice Chair and Presiding Member

David Balsillie  
Member

Paul Sommerville  
Member

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

Union Gas Limited ("Union") filed an Application on September 26, 2008 with the Ontario Energy Board ("Board") under section 36 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, (Sched. B), as amended, for an order of the Board approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2009.

The Board assigned file number EB-2008-0220 to the Application and issued a Notice of Application dated October 27, 2008.

The Board issued its Decision with Reasons on January 29, 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 deadline for the filing of the cost claims was February 23, 2009.

The Board received costs claims from the Association of Power Producers of Ontario (“APPrO”), Canadian Manufacturers & Exporters (“CME”), Energy Probe Research Foundation (“Energy Probe”), the School Energy Coalition (“SEC”), the Industrial Gas Users Association (“IGUA”), the London Property Management Association (“LPMA”), the Vulnerable Energy Consumers Coalition (“VECC”). The Consumers Council of Canada (“CCC”) filed its claim, with the Board’s consent, on March 12, 2009.

Union filed a letter, dated March 2, 2009, which raised concerns regarding CME’s and APPrO’s cost claims. In general, Union noted that the hours expended by CME and APPrO, (43.1 hours and 37.25 hours respectively), are disproportionately high when compared to the other intervenors. In CME’s case Union took the position that CME should not be permitted to claim costs for both Mr. Thompson and Mr. DeRose. In APPrO’s case Union did not see any basis on which to justify the hours claimed by both their consultant, Mr. Wolnik, and their legal counsel, Messrs. King and Myers.

In support of its concern, Union provided the following summary of the claimed hours.

Intervenor Hours

- CME	43.1
- APPrO	37.25
- SEC	30.3
- IGUA	22.3
- LPMA	18.75
- Energy Probe	13.25
- VECC	11.25

CME filed a reply, dated March 06, 2009, which took issue with Union’s assertions about it’s and APPrO’s cost claims, describing them as unreasonable and lacking merit. CME submitted the following: (i) it is customary for intervenors to have two or more professionals, be they counsel or consultants, work on a case; (ii) absent access to the detailed claims of the other intervenors, CME cannot itemize the tasks and explain any differences where more or less effort was involved as compared to other intervenors; (iii) Union has not discharged its onus, as complainant, to point to a superfluous task or specific task that involved an excessive amount of time; and (iv) the comparatively low hours claimed by VECC and Energy Probe reflect the brevity of their Written Argument which relied on the Written Argument of others.

CME noted that a Written Hearing of the type adopted in this proceeding case is less efficient and more time consuming than the one adopted in the 2009 rates proceeding for Enbridge Gas Distribution Inc. In that proceeding CME's claim (for phase1) is about \$1000.00 less than its claim in this proceeding, demonstrating the reasonableness of its claim. CME also submitted that Union's criticisms of APPrO's claim for Mr. Wolnik are without merit since all intervenors relied on Mr. Wolnik's services regarding the cost treatment of the Dawn Overrun Service-Must Nominate introduced by TransCanada Pipelines Limited.

In a letter filed on March 6, 2009, APPrO indicated its support of CME's entire reply submission and added some additional information. APPrO submitted that Union intentionally skewed its analysis by focusing on docketed hours rather than on monetary amount claimed and that, at just over \$9,000.00, APPrO's claim is not abnormally high when compared to other intervenors. APPrO noted that they used junior legal staff when possible and Mr. Wolnik claimed at a lower tariff than to which he is entitled.

### **Board Findings**

After having reviewed and considered the cost claims filed by the eligible intervenors and the submissions received from Union, CME and APPrO, the Board awards the intervenors 100% of their claims as filed. The Board sees no grounds to conclude that CME's and APPrO's docketed time was redundant or reflected inefficiency. The Board appreciates APPrO's efforts to use less experienced, less expensive resources where appropriate.

### **THE BOARD THEREFORE ORDERS THAT:**

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

- the Association of Power Producers of Ontario \$ 9,030.22;
- Canadian Manufacturers & Exporters \$ 13,377.00;
- the Consumers Council of Canada \$ 4,704.07;
- Energy Probe Research Foundation \$ 3,112.92;
- the Industrial Gas Users Association \$ 6,900.66;
- the London Property Management Association \$ 6,538.84;
- the School Energy Coalition \$ 7,482.45; and
- the Vulnerable Energy Consumers Coalition \$ 3,827.14

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 06, 2009

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary