



**EB-2011-0038**

**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, 2011.

**BEFORE:** Ken Quesnelle  
Presiding Member

Cathy Spoel  
Member

**DECISION AND ORDER ON COST AWARDS**  
**May 9, 2012**

**Background**

Union Gas Limited (“Union”) filed an application dated April 18, 2011 with the Ontario Energy Board (the “Board”) under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Schedule B, for an order of the Board amending or varying the rate or rates charged to customers as of October 1, 2011 in connection with the sharing of 2010 earnings under the incentive rate mechanism approved by the Board as well as final disposition of 2010 year-end deferral account and other balances (the “Application”). The Board assigned File Number EB-2011-0038 to the application.

On May 13, 2011, the Board issued its Notice of Application and Procedural Order No. 1 and adopted the intervenors in the EB-2010-0148 and EB-2010-0039 proceedings as

intervenors in this proceeding. The Board also determined that intervenors that were eligible for costs in those proceedings were deemed eligible for costs in this proceeding.

On February 29, 2012, the Board issued its Decision and Order on Draft Rate Order, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by Union.

On March 8, 2012, the Board issued its Rate Order.

The Board received cost claims from the Canadian Manufacturers & Exporters ("CME"), Consumers Council of Canada ("CCC"), 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") and Vulnerable Energy Consumers Coalition ("VECC"). No comments were received from Union.

### **Board Findings**

The Board has reviewed the cost claims of CME, CCC, Energy Probe, FRPO, IGUA, LPMA, SEC and VECC.

The Board notes that CME's cost claim includes costs incurred after the issuance of the Final Rate Order. The Board has removed that portion of the cost claim (totaling \$4,735.83 in fees and related taxes). To the extent that these costs may be associated with the matter subsequently commenced by the Board on its own motion (EB-2012-0206), the Board will provide further direction with respect to the submission of cost claims in that proceeding in due course.

In addition, CME's cost claim included disbursements that do not comply with the Board's *Practice Direction on Cost Awards*. The Board has therefore made a further reduction of \$42.87 to CME's cost claim. Therefore, the Board finds that CME should be awarded costs of \$128,066.65.

The Board also finds that Energy Probe's claim of \$12,910.54 is higher than the value attributable to its participation. Energy Probe's claim is based on a total of 41.75 hours for various activities (including 0.25 hours for case management). The Board notes that Energy Probe did not pose any interrogatories to the applicant nor did its representative

pose any questions at the technical conference. The Board further notes that its representative did not conduct any cross examination at the oral hearing.

Finally, Energy Probe's submissions in argument offered no unique or novel perspective in that it simply adopted the views of others. The nature of Energy Probe's argument, on its own, is not a determinative factor in the Board's value assessment. However, taken together with the other aforementioned factors the Board concludes that Energy Probe's level of participation exceeded what was necessary to ensure its interests were exposed and argued. The Board will not allow for the full recovery of Energy Probe's incurred costs.

The Board disallows 10 of the 41.50 hours attributed to preparation and attendance. While not making a finding that any one area of activity is specifically disallowed the Board notes that the 10 hours disallowed is roughly equal to Energy Probe's representative's attendance at the oral hearing and technical conference. Therefore, the Board finds that Energy Probe should be awarded costs of \$9,822.04.

The Board finds that CME, CCC, FRPO, IGUA, LPMA, SEC and VECC are eligible for 100% of their reasonably incurred costs of participating in this proceeding. The Board finds that the claims of CCC, FRPO, IGUA, LPMA, SEC and VECC are reasonable as are the adjusted claims of CME and Energy Probe and that each of these claims shall be reimbursed by Union.

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

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

• Canadian Manufacturers & Exporters	\$128,066.65;
• Consumers Council of Canada	\$18,831.45;
• Energy Probe Research Foundation	\$9,822.04;
• Federation of Rental-housing Providers of Ontario	\$56,914.61;
• Industrial Gas Users Association	\$11,640.17;
• London Property Management Association	\$22,671.46;
• School Energy Coalition	\$25,905.00; and
• Vulnerable Energy Consumers Coalition	\$8,008.58.

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, May 9, 2012

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary