



**EB-2008-0417**

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

**AND IN THE MATTER OF** statements of claim issued by plaintiffs alleging certain late payment penalties collected by Union Gas from them offend s. 347 of the Criminal Code and seeking damages under the *Class Proceedings Act*, 1992;

**AND IN THE MATTER OF** an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act*, 1998, for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission, and storage of gas as of January 1, 2009;

**BEFORE:** Gordon Kaiser  
Vice-Chair and Presiding Member

Paul Sommerville  
Member

Cynthia Chaplin  
Member

## **DECISION AND ORDER**

### **The Application**

On December 19, 2008, Union Gas Limited ("Union" or the "Applicant") filed an application seeking an amendment to the terms of Deferral Account No. 179-113 (the "Account") to permit Union to record in the Account the amount of any judgment

against Union (the “application”). Union did not request that the Board make a determination whether any amount recorded in the Account would be recoverable from Union’s customers. The Board assigned File Number EB-2008-0417 to the application.

The application stems from class proceedings initiated in respect of certain late payment penalties (“LPP”) collected by Union. In a Decision dated September 30, 2004 in RP-2003-0063/EB-2004-0386 (the “LPP class action”), the Board approved the establishment of the Account specifically to record Union’s legal costs, the costs of actuarial advice, and the costs of analyzing historic billing records. On January 27, 2009, Ontario’s Superior Court heard Union’s motion for certification and approval of the settlement of the class action. The Court rendered its Decision on February 10, 2009 approving certification and the settlement proposal.

In this application, the Applicant has asked that the Account definition be amended to allow the inclusion of the costs of any judgment against Union as a result of the LPP class action.

### **The Proceeding**

On Tuesday, January 20, 2009 the Board issued a Notice of Written Hearing and Procedural Order No. 1 (the “Notice”), allowing parties an opportunity to comment on the application. Union filed a letter on February 2, 2009, noting that parties to this proceeding had until January 29<sup>th</sup>, 2009 to file submissions with respect to this matter and that no parties made submissions. Union reiterated its request for the proposed amendment to the accounting order for the Account.

### **Board Findings**

The issue before the Board concerns only whether amounts may be recorded in the Account, and not whether these amounts will be recoverable from ratepayers. The Board finds Union’s request reasonable, and accepts the proposed amendment to the Accounting Order for Deferral Account No. 179-113 to include the cost of any judgment against Union in respect of the LPP class action.

**THE BOARD THEREFORE ORDERS THAT:**

1. Effective as of January 1, 2009, Union shall amend the definition of Deferral Account No. 179-113 to permit recording of any costs incurred by Union in defending the late payment penalty litigation, including the amount of any judgment against Union.

**ISSUED** at Toronto, February 13, 2009

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary