

Reply to the Attention of Mike Richmond
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Our File No. 231915
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SUBMITTED VIA RESS AND COURIER

Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Attention: Kristen Walli
Board Secretary
boardsec@ontarioenergyboard.ca

Dear Ms. Walli:

**Re: Response to Union's Objection to CPA Cost Claim
EB-2015-0179**

This letter is in response to Union's objection to the Costs Claim filed by the Canadian Propane Association (the "CPA").

Union has lodged a generalized objection to the total amount of the CPA's claim, but has not been able to identify any particular cost or time entry from the itemized list which it considers unreasonable or objectionable. The CPA submits that each individual time entry submitted is justifiable on its own, and Union has not suggested otherwise.

The CPA has provided a detailed breakdown of costs incurred on a day by day basis, and would be prepared to defend any individual cost in respect of which questions were raised. However, no such individual costs were questioned. Accordingly, the CPA respectfully submits that, in the absence of any specific objections, its claim should be allowed.

Even though, in our respectful submission, generalized criticisms do not require a response as they do not identify any particular objection, the CPA wishes to nonetheless respond to the following Union assertions:

1. Union's submission: In its cost claim, CPA describes itself as a full Phase I participant and goes on to identify how it participated. In reviewing this, Union does not agree with CPA's assertion to have prepared evidence (including expert witness reports). Union agrees CPA filed a letter (dated December 16, 2015) which provided a description of the evidence it intended to file. However, such evidence was never produced in this proceeding.

CPA Response: On November 30, 2015, the Board ordered intervenors to file, by December 7, 2015, a description of the nature of the evidence they planned to file. The Board also advised that procedures for the submission of evidence would be forthcoming, and set down an oral hearing date of January 6, 2016 (about 3 weeks later, excluding the winter break), for the purpose of cross-examination on evidence. On December 10, 2015, the Board further ordered intervenors to file a detailed description of their evidence by December 16, 2015.

The CPA began the process of preparing its evidence promptly on December 6, 2015. The CPA determined, quite reasonably, that it could not provide the Board with an accurate detailed description of evidence without having that evidence in hand. Nor could it file that evidence prior to a January 6 hearing until it began preparing that evidence prior to the Christmas holiday in December. The CPA therefore began preparing its evidence on December 1; filed a detailed description of that evidence on December 16; and was ready to file its evidence whenever the Board gave the order.

On January 20, 2016, however, the Board announced that EB-2015-0179 would be put on hold. The Board never invited intervenors to submit the evidence for which it had, weeks earlier, demanded a detailed description.

The fact that CPA's evidence was never filed in this proceeding is not an indication that such evidence was not prepared, nor that such preparation was unreasonable. Until the Board cancelled Phase I on January 20, 2016, preparing Phase I evidence was not only reasonable, but should have been expected in anticipation of a January 6 hearing.

Nonetheless, the CPA's cost claim in this proceeding does not include any costs related to the preparation of evidence and reports by expert or other third parties. The CPA's cost claim **only** includes the legal fees of counsel for time spent preparing the detailed description of evidence for submission to the Board on December 16, 2015, as ordered by the Board. In the dockets submitted, the only references to "evidence" after December 16 amount to 12 minutes of "communications re: evidence" on December 21 and 6 minutes on January 5.

2. Union's submission: CPA also raised the issue of scope as it relates to Phase II of the application... CPA proposed a "*reduction of 12.35 hours from the attached cost claim, or a \$3,904.70 reduction.*" Union objects to the principle of this approach. Cost claims are not a negotiation. ... Rather than accepting a proposed reduction from CPA, Union submits the Board needs to consider the issue of scope and whatever impact it could have on CPA's claim as part of its review.

CPA Response: Union objects to the "principle" with respect to the CPA's proposal to reduce its cost claim by \$3,904.70. The CPA has no interest in arguing with Union on this point. If Union takes issue with the principle of a reduction, the CPA will gladly withdraw the suggestion. If, on the other hand, Union's objection is really with the *quantum* of the reduction and not the *principle* of a reduction, it has not said so. Nor has Union made any attempt to explain why the proposed quantum of the reduction is unreasonable, or what Union believes to be a more reasonable quantum.

As indicated in the CPA's cost claim submissions, the CPA does not believe it exceeded the scope. In any event, "scope" is not an issue throughout any part of Phase I, and should not be an issue for much of Phase II.

The proposal submitted by CPA was made solely out of respect for the Board's time and Union's time, in a good faith effort to save everyone the time and effort of having to argue the "scope" point. The CPA was willing to forego \$3,904.70 of costs to which it believes it is entitled, in the interests of facilitating a speedy conclusion to EB-2015-0179 for all involved, including the Board and Board Staff. Union apparently objects in principle to such a concession, but has not offered any specific and justified objection to any of the specific amounts claimed, nor submitted any figures which it considered to be more appropriate.

The CPA stands by its original submissions. Although Union has objected to principles and concepts, and noted (correctly) that the CPA's claim reflects a greater investment of time and attention in this proceeding than other intervenors, not a single time entry or claimed amount has been challenged or questioned, the level of effort has not been alleged to be too great, and no alternate suggestion of a more reasonable cost award has been submitted. In the absence of any specific objections, the CPA submits that the Board should consider its costs as filed.

Yours truly,



Mike Richmond

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