

September 19, 2007

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: EB-2007-0606/ EB-2007-0615

This letter is Union's response, pursuant to the Board's Procedural Order #7, to the amended motion by the Consumers Council of Canada (the "Council").

In its motion, the Council seeks an order that an interim cost award or awards be made to it after various phases of this proceeding. Alternatively, the Council seeks interim recovery of its disbursements. The Council also seeks an order that the cost awards be based upon an hourly rate of \$300.00 for senior counsel and consultants. Union does not intend to address this latter aspect of the Council's motion. In support of its motion, the Council relies on evidence to the effect that, in the usual course, it takes an inordinate amount of time for the Council to receive any cost award. Union is sympathetic to this position, and appreciates that in some cases the time between the commencement of a proceeding and the receipt of a cost award poses a challenge for certain intervenors, such as the Council. Ultimately, however, Union does not support the Council's motion.

In Union's submission the relief sought is impractical and inconsistent with the Board's Practice Direction on Cost Awards. The Practice Direction provides that in determining the amount of a cost award to a party, the Board may consider, among other things, factors such as whether the party:

- (a) participated responsibly in the process;
- (b) made reasonable efforts to ensure that its evidence, and questions on cross-examination, were not unduly repetitive;
- (c) contributed to a better understanding by the Board of one or more of the issues; and,
- (d) engaged in any conduct which tended to lengthen unnecessarily the duration of the process.

Almost of necessity, the above, and all of the factors referred to in the Practice Direction can only be dealt with in a meaningful way at the conclusion of a hearing. It is simply not possible to determine on an interim basis whether a party is acting responsibly. Accordingly, while the Council does state that the applicants would have the right to review any interim cost claims, practically it would be hard to come to any conclusion as to whether a claim should be disallowed, paid, or paid only in part. In conclusion, it is Union's view that the Board should not set a schedule for the Council and other intervenors to submit cost claims on an interim basis. Rather, it is submitted, the Board should ensure that all costs claim are dealt with as quickly and efficiently as possible at the conclusion of the proceeding.

Yours truly,

[original signed by]

Mike Packer, CMA, CIM
Director, Regulatory Affairs

cc: Michael Penny
Crawford Smith
Connie Burns
EB-2007-0606/EB-2007-0615 Registered Intervenors