

September 24, 2007

Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2701
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms Walli:

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

We are counsel to the Consumers Council of Canada (“Council”). On behalf of our client, and pursuant to Procedural Order No. 7, we provide herewith its response to the comments received, from various parties, on the Council’s Amended Notice of Motion, dated August 23, 2007.

Mr. Aiken, on behalf of three entities, and Mr. Buonaguro, on behalf of the Vulnerable Energy Consumers Coalition, commented that the relief which our client sought applied only to it. As the Board will appreciate, our client can only seek relief for itself. However, the nature of the relief requested, and the arguments in support of the granting of that relief, apply to all of those intervenors which depend on awards of costs to support their participation in Board proceedings.

Enbridge Gas Distribution Inc. (“EGD”), perhaps inadvertently, leaves the impression that what our client seeks is some form of advance funding. That is not the case. Our client seeks the application of the existing cost award system, which is predicated on cost awards made after, and not before, participation in a proceeding.

EGD does indicate that it is not opposed to interim cost awards. It does, however, suggest that those interim cost awards be limited to 90% of the amount claimed, with 10% held back to allow the Board to decide, at the conclusion of the proceeding, “whether the interim request was overstated having regard to the requester’s contribution to the entire proceeding”. Our client has no objection to the employment of that mechanism, although it does not believe it is necessary.

Union Gas Limited (“Union”), while expressing some sympathy for the position of the Council, argues that awarding interim costs is “impractical and inconsistent with the Board’s Practice Direction on Cost Awards” (“Practice Direction”). In particular, Union argues that “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” and that it is “simply not possible to determine on an interim basis whether a party is acting responsibly”. With respect, we disagree. The utilities participate in each phase of a proceeding. They are in the best possible position to assess whether a party is acting responsibly. They are, at any point in the proceeding, fully able to advise the Board that a party’s cost claim should be denied, in whole or in part, on the basis of the factors set out in the Practice Direction.

We observe that, to our knowledge, neither Union nor EGD has, within recent memory, objected to a cost claim on the basis that a party did not behave responsibly. Union’s concern would, therefore, seem more theoretical than real. Having said that, however, there is nothing to prevent either Union or EGD objecting to an interim cost claim, on the ground that a party has not behaved responsibly, or on the basis of any of the other factors listed in the Practice Direction.

It is critical to put the comments from various parties, and our response to them, in perspective. The principal, though by no means the only, driver for the filing of our client’s Motion was the position of its expert, Mr. Loube. As set out in the Affidavit of Deborah L. Hurst, sworn the 14th day of August, 2007, Mr. Loube’s first work in advising various parties to the incentive regulation consultation process was done in October of 2006. As a result of a cost order, issued since our client’s Amended Notice of Motion was filed, and the subsequent payment of the costs so awarded, a cheque was sent to Mr. Loube, by courier, on Friday, September 21, 2007. That is a lapse of approximately 11 months between the time the work was first done on the matter and payment for that work was received. The Council believes that no one should be expected to work under those conditions. The Council does not believe that any expert would work for the utilities on those terms, nor would any expert work for the Board, itself, on those terms. The irony, of course, is that all experts’ fees, regardless of whom they work for, are paid by ratepayers.

Neither utility downplays the important role intervenors play in Board proceedings. On the contrary, EGD expressly acknowledges the importance of the role intervenors play. That role is evidenced in this proceeding. In this proceeding, and in the consultation which preceded it, the Board retained the Pacific Economics Group (“PEG”) to provide expert advice. PEG takes a particular position on the form and content of the appropriate incentive regulation regime for the gas utilities. It is up to the intervenors, such as our client, to provide different, and perhaps opposing, views to that taken by PEG. The role of the intervenors is thus critical to a full consideration of the various alternative forms of incentive regulation. To put the matter another way, the role of the intervenors is critical to the protection of the public interest and, therefore, to allowing the Board to fulfil its statutory mandate. However, the intervenors are hobbled by rules which require them to work for months without

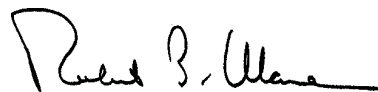
payment and at rates which are not only well below the market but which the utilities and the Board itself would be unlikely to pay their external representatives.

Mr. Thompson, writing on behalf of the industrial Gas Users Association, proposes the adoption of a metric that would require payment of cost awards within 90 days of the release of a Board decision. The Council supports that proposal. We note, however, that the adoption of such a metric must be one part of a larger solution, including the payment of interim cost awards and an increase of the tariff levels for senior counsel, experts, and consultants, to the funding problems that imperil the continued participation of essential stakeholders in the Board's processes.

We submit, accordingly, that these circumstances require a correction, lest intervenors not be able to participate in any meaningful way, if at all, not just in this proceeding, but in all Board proceedings.

Yours very truly,

WeirFoulds LLP



Robert B. Warren

RBW/dh

cc: Consumers Council of Canada

Attn: Bill Huzar

cc: Enbridge Gas Distribution Inc.

cc: Union Gas Limited

cc: Fraser Milner LLP

cc: All Parties

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