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WeirFoulds LLP
BARRISTERS & SOLICITORS

August 23, 2007

DELIVERED

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. On behalf of our client, and with the original of this letter, we are delivering to you 11 copies of an Amended Motion Record. Attached hereto is an electronic copy of the Amended Motion Record.

Yours very truly,

WeirFoulds LLP



Robert B. Warren

RBW/ag

c: *Michael Penny (Torys LLP)*
Jerry Farrell (Fraser Milner Casgrain LLP)
Bill Huzar (Consumers Council of Canada)
All Parties

995427.1

IN THE MATTER OF the Ontario Energy Board Act, 1998,
S.O. 1998, c.O.15, Sch. B;

AND IN THE MATTER OF an Application by Enbridge Gas
Distribution Inc. for an Order or Orders approving or fixing
rates for the sale, distribution, transmission and storage of gas
commencing January 1, 2008.

AND IN THE MATTER OF an Application by Union Gas Ltd.
("Union Gas") for an Order or Orders approving or fixing rates
for the sale, distribution, transmission and storage of gas
commencing January 1, 2008.

AND IN THE MATTER OF a combined proceeding of the
Board pursuant to section 21(1) of the Ontario Energy Board
Act, 1998.

AMENDED MOTION RECORD

DATE: ~~August 16, 2007~~
August 23, 2007

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Solicitors for Union Gas Ltd.

AND TO: THE PARTIES

INDEX

INDEX

<u>TAB</u>	<u>DESCRIPTION</u>
1.	<u>Amended</u> Notice of Motion
2.	Affidavit of Deborah L. Hurst, sworn August 14, 2007.

TAB 1

IN THE MATTER OF the Ontario Energy Board Act, 1998,
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AMENDED NOTICE OF MOTION

TAKE NOTICE THAT the Consumers Council of Canada (the "Council") will make a motion to the Ontario Energy Board ("Board") on a date and at a time to be fixed by the Board at the Board's Chambers at 2300 Yonge Street, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Council proposes that the Motion be dealt with in writing.

THE MOTION IS FOR:

1. An Order that an interim cost award or awards be made to the Council after various phases of this proceeding, according to a schedule to be determined by the Board.
2. An Order that interim and final cost awards be calculated using a scale of remuneration allowing an hourly rate of \$300 for senior counsel, consultants and experts.

3. In the alternative, an Order granting the Council its reasonably incurred disbursement costs only, on a periodic basis throughout the course of the proceeding, according to a schedule to be determined by the Board.
4. An order that a final cost award be made within thirty (30) days of the delivery of final argument in the proceeding.
5. The Council's costs of this Motion.
6. Such further and other relief as counsel may advise and the Board order.

THE GROUNDS FOR THE MOTION ARE:

1. The Council is a party to the applications of Enbridge Gas Distribution Inc. and Union Gas Ltd. (collectively, the "Applicants") for orders approving their rates for the period commencing January 1, 2008 (the "Proceeding").
2. The Council is a public interest, non-profit entity with no funds of its own to support its participation in the Proceeding. It relies entirely on an award of costs to be able to participate.
3. The typical timeline, between when work is first done in a Board proceeding and the receipt of a cost award, is between nine (9) and twelve (12) months.
4. Each of the Council's counsel, its consultant and its expert will incur disbursement costs and expend substantial amounts of time on each phase of the proceeding, including the discovery phase, the preparation of evidence phase, the settlement process phase, the oral hearing phase and the argument phase.
5. In the absence of an interim award or awards of costs, the Council must ask its counsel, its consultant and its expert to work for long periods of time without any compensation. That puts the Council at a disadvantage in comparison with the Applicants, and with other parties to the Proceeding.

6. The Council has, with the Vulnerable Energy Consumers Coalition (“VECC”), retained an expert, Robert Loube, to provide assistance to them, and if necessary, expert evidence in the proceeding. Mr. Loube is based in Maryland. Mr. Loube must incur expenses to provide assistance to the Council and to VECC. In the absence of an interim cost award, Mr. Loube must carry his disbursement costs until the final cost award is received.
7. The schedule proposed for the Proceeding would have the final phase, the delivery of argument, concluded in January or February of 2008. Based on that schedule, and if the Board follows its usual practice with respect to the treatment of cost claims, cost awards would not be made, and costs paid, until May or June of 2008. That would be approximately one (1) year after the first substantive work on the Proceeding had to be undertaken by the Council’s representatives.
8. The Boards Practice Direction on Cost Awards provides for payments of cost awards according to a tariff. The tariff allows for the payment of a maximum of \$210.00 an hour for senior counsel, consultants and experts. That hourly rate has not changed for nearly fifteen (15) years, and does not reflect the current market rates for senior counsel, consultants and experts.
9. That the hourly rate available for senior counsel, consultants and experts is well below current market rates puts the Council at a disadvantage in relation to the utilities and to those interveners who are able to pay higher rates.
10. The Board has commenced a Consultation on the Practice Direction on Costs Awards, EB-2007-0683, in which the Board has invited stakeholders to comment on, among other issues, whether the tariff amounts in the Practice Direction are sufficient. It is unknown when the Board will reach a decision on the tariff question and whether, when it does so, it will apply that decision to this Proceeding.
11. The Board, in EB-2006-0034, awarded the stakeholder participants in the CIS and Customer Care consultative process costs based on an hourly rate for senior counsel of \$300. That rate reflects a consensus agreement between EGD and the representatives of three stakeholder groups, including the Council, that the hourly rate of \$300 was an

appropriate reflection of current market rates, and the importance of both seniority and effective stakeholder representation to the successful operation of the regulatory process.

12. Section 30 of the *Ontario Energy Board Act* gives the Board the discretion to make interim and final awards of costs. The Board thus has the authority to, for example, make costs awards after each phase of the Proceeding. Were such a schedule established, the Applicants would retain the right to object to each claim for interim costs. Making provisions for interim awards of costs would not prejudice the Applicants.

THE FOLLOWING DOCUMENTARY EVIDENCE will be relied on in this hearing of this Motion:

1. The Record herein.
2. The Affidavit of Deborah L. Hurst, sworn the 14th day of August 2007.
3. Such further material as counsel may advise and this Board may permit.

~~August 16, 2007~~
August 23, 2007

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TAB 2

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AFFIDAVIT OF DEBORAH L. HURST

I, **DEBORAH L. HURST**, of the City of Toronto, in the Province of Ontario
MAKE OATH AND SAY:

1. I am an assistant in the office of WeirFoulds LLP, counsel to the Consumers Council of Canada (the "Council"), and as such have knowledge of the matters herein deposed.
2. The Council is a party in the applications of Enbridge Gas Distribution Inc. ("EGD") and Union Gas Ltd. ("Union") for approval of rates for a period commencing January 1, 2008. Those applications are being considered in a combined proceeding, bearing Ontario Energy Board ("Board") files number EB-2007-0606 and EB-2007-0615 (collectively, the "Proceeding")
3. The Council has also been a party in a number of Board proceedings over the past several years. In each of those proceedings the Council has been found to be eligible for a cost award. In each of those proceedings the Council has filed a claim for costs. In each of those proceedings the Council has been awarded its costs.
4. I have reviewed our records for several of those proceedings in order to determine the timeline between the date when our firm first recorded its work and the time when the cost award was ultimately received. My review reveals the following information:
 - (a) In EB-2005-0551, which was the Board's NGEIR proceeding, the date of the first docket was in February 2006. The Council's Statement of Costs was filed September 29, 2007. The cost award payments were received on

December 22, 2006 from Enbridge Gas Distribution Inc. and on January 18, 2007, from Union Gas Limited;

- (b) In RP-2005-0020, which was the application of Hydro One Networks Inc. for approval of certain rates, the first docket was in October of 2005. The statement of costs was filed on February 27, 2006. The cost award was received on July 7, 2006;
- (c) In EB-2003-0203, which was EGD's application for approval of rates for its fiscal 2004, the first docket was in December of 2003. The statement of costs was filed on August 12, 2004. The cost award was received on December 21, 2004;
- (d) In EB-2006-0034, which was EGD's application for approval its rates for its fiscal 2007, the first docket was in October of 2006. The statement of costs was filed on May 3, 2007. The cost award has not yet been received.

5. In each of the proceedings described in paragraph 4, the periods of time between the first docket and the receipt of the cost award ranges from nine to twelve months.

6. In EB-2005-0001, which is EGD's application for approval of its rates for its fiscal 2006, the date of the first docket was in April of 2005. In that proceeding the Council made a request for interim costs on November 18, 2005. Those interim costs were paid on December 21, 2005.

7. As set out in paragraph 3 above, the Council has been a party in many Board proceedings, in each of which is claimed for and been awarded, costs. I have prepared the Council's costs claims in all of those proceedings. Based on that work, I believe that the timelines, between when work was first done in a proceeding and when a cost award is received, as set out in paragraphs 4 and 6 above, is representative.

8. Prior to the commencement of the Proceeding, the Board held a consultation process on the form of incentive regulation which might be used for EGD and for Union. The Council participated in that consultation process. The Council's first work in the consultation process was recorded in October of 2006. By Notice dated February 9, 2007, the Board directed parties to the consultation process to file cost claims. Pursuant to that Notice, the Council filed a cost claim on February 26, 2007. On the same date, the Council filed a cost claim for the expert who had been advising several parties, including the Council, in the consultation process. On May 28, 2007, the Board issued its Decision on Cost Awards awarding the Council and its expert 100% of their claimed costs. To date there has been no Board cost order, arising from that Decision on Cost Awards, and so the costs have not been paid.

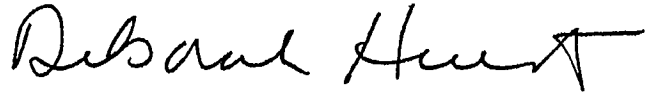
9. I make this Affidavit in support of an application on award of interim costs in EB-2007-0606/EB-2007-0615.

SWORN before me at the City of Toronto,)
on this 14th day of August, 2007.)



Commissioner For Taking Affidavits

ROBERT B. WARREN



DEBORAH L. HURST

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