

ONTARIO ENERGY BOARD

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

IN THE MATTER OF an application by Union Gas Limited
for an order or orders approving its 2010 Demand Side
Management Plan.

NOTICE OF MOTION

(Motion for Review of Board Decision and Order on Cost Awards issued January 7, 2010)

THE INTERVENOR, the Low-Income Energy Network (LIEN), will make a motion pursuant to Rules 8.02, 42 and 44 of the Board's Rules of Practice and Procedure, for review of the Board's Decision and Order on Cost Awards (Cost Decision), issued on January 7, 2010, in relation to LIEN's application for an award of its costs in this Proceeding (LIEN's Costs Claim).

PROPOSED METHOD OF HEARING: LIEN requests an oral hearing and that the hearing of this motion be combined with the hearings of the motions for review filed by LIEN in EB-2008-0106 and EB-2009-0154 on the basis that there is a substantial overlap of the grounds in each motion for review.

THE MOTION IS FOR:

1 An Order:

- (a) that LIEN's Costs Claim complies with the Board's criteria for awarding costs in the Board's Practice Direction on Cost Awards (Practice Direction)
- (b) varying the Costs Decision to award LIEN 100% of the costs claimed in LIEN's Costs Claim
- (c) costs of this motion, and
- (d) such further and other relief as LIEN's Counsel may request and this Board deem just.

THE GROUNDS FOR THE MOTION ARE:

1 LIEN is an intervenor in this Proceeding, eligible for an award of costs in accordance with Rule 41 of the Board's Rules of Practice and Procedure (Rules) and in accordance with the Practice Direction.

2 The Board erred and exceeded its jurisdiction in reducing LIEN's costs award in the Costs Decision, in breach of the Board's duty of fairness to LIEN and in wrongful denial of LIEN's legitimate expectations that the Board will comply with its own rules and principles concerning cost awards.

3 LIEN's costs, as set out in LIEN's Cost Claim, were incurred in compliance with the Practice Direction including, but not limited to, the Board's Principles in Awarding Costs in section 5 of the Practice Direction.

4 LIEN's costs were incurred in the legitimate expectation that the Board would comply with its Practice Direction.

5 The Board received no objection to LIEN's Costs Claim from the Board's Costs Assessment Officer, responsible for reviewing intervenors' cost claims.

6 Although Union did question LIEN's Costs Claim, Union did not do so in terms of the Practice Direction. Union only noted that the total hours submitted exceed the average number of hours of the other intervenor groups (calculated excluding LIEN).

7 The Board arbitrarily chose to reduce LIEN's Cost Award on a ground not enumerated in section 5 of the Practice Direction, without any analysis of LIEN's Cost Claim in terms of the principles in that section.

8 Ontario Energy Board Rules of Practice and Procedure (revised July 14, 2008).

9 *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B).

10 *Statutory Powers and Procedure Act*, R.S.O. 1990, c. S.22.

11 Such further and other grounds and Counsel may request and this Board deem just.

THE EVIDENCE TO BE USED AT THE MOTION:

- 1 Materials in the record of this Proceeding
- 2 Such further and other evidence as Counsel may request and the Board deem just.

January 27, 2010

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AND TO: **ALL REGISTERED INTERVENORS**

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