



EB-2010-0021

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

AND IN THE MATTER OF a proceeding initiated by the Ontario Energy Board to determine methodologies for commodity pricing, load balancing and cost allocation for natural gas distributors;

AND IN THE MATTER OF an application by Enbridge Gas Distribution Inc. for approval of its 2010 Natural Gas Demand Side Management Plan;

AND IN THE MATTER OF an application by Union Gas Limited for approval of its 2010 Natural Gas Demand Side Management Plan;

AND IN THE MATTER OF a Notice of Motion by the Low-Income Energy Network for review of the Board's Decision and Order on Cost Awards in EB-2008-0106, EB-2009-0154 and EB-2009-0166;

AND IN THE MATTER OF Rules 42, 44.01 and 45.01 of the Board's *Rules of Practice and Procedure*.

NOTICE OF HEARING AND PROCEDURAL ORDER NO. 1

On January 4, 2010, the Board issued its Decision and Order on Costs Awards (the "QRAM Cost Decision") in relation to a proceeding it commenced on its own motion to determine the methodology to be used by natural gas distributors for (i) gas commodity pricing, (ii) load balancing and (iii) cost allocation between the supply and delivery functions in relation to regulated gas supply (EB-2008-0106).

On January 7, 2010, the Board issued its Decision and Orders on Cost Awards (the "DSM Cost Decisions") in relation to the 2010 Demand Side Management ("DSM")

applications filed independently by both Enbridge Gas Distribution Inc. and Union Gas Limited (EB-2008-0154 and EB-2009-0166).

On January 25, 2010, the Board received a Notice of Motion from LIEN seeking a review of the Board's QRAM Cost Decision; on January 27, 2010, the Board received two more Notices of Motion for Review from LIEN seeking reviews of each the Board's DSM Cost Decisions (collectively, the "Notices of Motion"). The Notices of Motion are attached to this Notice of Hearing and Procedural order as Appendix A. LIEN requested that the hearings of all motions be combined on the basis that there is a substantial overlap of the grounds in each motion for review.

The Board has determined that the most efficient process to handle these motions of review is to hear them in a combined proceeding. The Board has assigned file number EB-2010-0021 to these applications.

As a preliminary matter, the Board has determined that it will proceed by way of a written hearing to determine the threshold question of whether the matters should be reviewed.

Rule 45.01 of the Board's *Rules of Practice and Procedure* states:

In respect of a motion brought under Rule 42.01, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits.

The Board has determined that it wishes to receive submissions from parties on the threshold question of whether the motions to review should be reviewed before conducting any review on the merits.

Subject to the determination of the preliminary matter, the Board may conduct a review on the merits in relation to the three Cost Decisions.

The Board considers it necessary to make provisions for the following procedural matters related to this proceeding. Further procedural orders may be issued from time to time.

THE BOARD THEREFORE ORDERS THAT:

1. The Low-Income Energy Network shall file its written submissions on the preliminary matter identified in this Notice of Hearing and Procedural Order with the Board, and serve copies on Enbridge Gas Distribution Inc., Union Gas Limited and Natural Resource Gas Limited on or before **Monday, February 22, 2010**.
2. Board Staff, Enbridge Gas Distribution Inc., Union Gas Limited and Natural Resource Gas Limited may file written submissions, if any, on the preliminary matter with the Board, and serve copies on the Low-Income Energy Network, Enbridge Gas Distribution Inc., Union Gas Limited and Natural Resource Gas Limited on or before **Monday, March 1, 2010**.
3. The Board may order costs in this proceeding. The Board will issue details with respect to the filing of cost claims at a later date.

If you have a user ID, please submit your submission through the Board's web portal at www.errr.oeb.gov.on.ca in searchable/unrestricted PDF format. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. You may also send your submission by e-mail to the following address: boardsec@gov.on.ca. Additionally, two paper copies are required and should be sent to the addresses below. Those who do not have Internet access are asked to submit their submissions on a CD or diskette in PDF format, along with seven paper copies by 4:45pm on the date indicated, and copy all parties. Parties must also include the Case Manager, Josh Wasylyk josh.wasylyk@oeb.gov.on.ca and Board Counsel, Michael Millar michael.millar@oeb.gov.on.ca on all electronic correspondence related to this case.

Ontario Energy Board

P.O. Box 2319
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Board Secretary

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DATED at Toronto February 12, 2010.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A

Notices of Motion as filed by the Low-Income Energy Network

EB-2010-0021

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF a proceeding initiated by the
Ontario Energy Board to determine methodologies for
commodity pricing, load balancing and cost allocation for
natural gas distributors.

NOTICE OF MOTION

(Motion for Review of Board Decision and Order on Cost Awards issued January 4, 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 4, 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.

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 any party responsible for payment of cost awards in this Proceeding nor from the Board's Costs Assessment Officer, responsible for reviewing intervenors' cost claims.

6 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.

7 In reducing LIEN's Cost Award the Board unfairly and arbitrarily discriminated against LIEN's Costs Claim in favour of VECC's costs claim.

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 25, 2010

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AND TO: **ALL NATURAL GAS DISTRIBUTORS**

AND TO: **ALL REGISTERED INTERVENORS**

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF a proceeding initiated by the
Ontario Energy Board to determine methodologies for
commodity pricing, load balancing and cost allocation
for natural gas distributors.

NOTICE OF MOTION

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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 Enbridge Gas
Distribution Inc. 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-2009-0166 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 utility or from the Board's Costs Assessment Officer, responsible for reviewing intervenors' cost claims. In fact, Enbridge filed a letter stating that it found the claims to be consistent with the allowances of prescribed rates within the cost assessment guidelines and that it had no objection to the claims.

6 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.

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

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

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

10 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**

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 Enbridge Gas
Distribution Inc. for an order or orders approving its
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NOTICE OF MOTION

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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

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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)
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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).

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- 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**

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
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