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Dear Ms. Walli:

**Association of Power Producers of Ontario ("APPrO")  
EB-2012-0337 – Union Gas 2013-2014 Large Volume Demand Side Management Plan**

We are writing in response to Union's letter of April 9, 2013, which provided comments on APPrO's cost claim in the above-noted matter.

As pointed out by Union, APPrO's original cost claim totalled approximately \$196,000. Union appears to take issue with three aspects of APPrO's claim: 1) that it is significantly higher than GEC's cost claim; 2) that some of the overlap between legal counsel and APPrO's consultant, Mr. John Wolnik, appears to be unreasonable; and 3) that certain time charged by Mr. Wolnik before Procedural Order #1 and after the close of argument should be disallowed. We will address each comment in turn.

Comment #1 – APPrO's Cost Claim as Compared to GEC: As Union stated, APPrO's cost claim is significantly higher than that of GEC. We believe it is unfair to compare the two intervenors in the context of this proceeding. While GEC's member groups are charitable or non-profit organizations with an interest in environmental and energy policy matters, APPrO represents the interests of large consumers in relation to Union's regulated services (APPrO's members are among the largest consumers of Union's services). Unlike GEC's members, the direct financial impact of Union's DSM programming on APPrO members was and is significant. For example:

- Union's 2013 DSM budget for Rate 100/T2 is approximately \$3.7 million, exclusive of the low income budget, and Union incentive payments (see EB-2012-0337, Ex A/Tab 1/Sch 1).
- The 2011 DSM Variance Account and Share Savings mechanism account for Union's DSM program resulted in T1 and Rate 100 customers incurring a further \$7-million in one-time DSM-related charges that have recently become due (see EB-2012-0087, Ex A/Tab 3/Sch 1, Page 1).
- APPrO customers represent approximately 40% of the volume of these rate categories.

These impacts are clearly financially significant for APPrO members, and motivated APPrO to put forward its argument for an "opt out" proposal. The decision to advance an opt out proposal was not taken lightly by APPrO and represented a major commitment – both of funding and resources – by its members (discussed further below).

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The nature of APPrO's position also distinguishes it from GEC. While forms of "opt out" have been supported in other jurisdictions, the position was novel in Ontario's regulatory regime. Putting forth such a proposal required extensive extra-jurisdictional and legal research on the part of APPrO's legal counsel, Mr. Wolnik, and its experts at Navigant Consulting (who also prepared and conducted a survey of APPrO members). The evidence that APPrO filed also generated a great deal of work for APPrO's counsel and consultants. As an example, while GEC's evidence resulted in four brief interrogatories from CME, APPrO received over 90 questions/sub-questions from other parties (many of which required great effort to answer). These matters were further complicated by a motion from GEC to compel additional answers, compelling APPrO's team to spend additional time on the file (resulting in the filing of a revised 92-page interrogatory response).

With respect to the hearing itself, as can be seen in the transcript, APPrO's witness panel was subject to far lengthier cross examination than GEC's panel. To prepare for this inevitability, APPrO's counsel and consultants were forced to engage in extensive witness preparation.

To summarize, the significant financial impact on APPrO's members, the nature of its proposal and the work it generated help differentiate APPrO from GEC in this case. Comparing their respective cost claims is inappropriate, and should have no weight in deciding whether APPrO's claim is reasonable in this proceeding.

Comment #2 – Overlap Between APPrO's Legal Counsel and Consultant: Union claims that, while a certain amount of overlap is necessary and practical, the amount of overlap between Mr. Wolnik and APPrO's legal counsel seems unreasonable for ratepayers to fund. With respect, APPrO maintains that its counsel and consultants conducted their representation of APPrO responsibly and with a view to minimizing overlapping efforts while ensuring proper representation. Indeed, Mr. Wolnik and APPrO's counsel made every effort to avoid overlap in this proceeding. Examples of this include Mr. Wolnik attending the settlement conference with no legal support, and the fact that he was not involved in the preparation of cross examination/final argument compendiums.

Mr. Wolnik has a long and distinguished career in the gas industry, and has been involved in numerous proceedings before the Board. His expertise on DSM-related matters was vital to APPrO's case. (Indeed, we believe Mr. Wolnik's contributions benefitted the Panel and other parties to the proceeding, as much of the technical and financial analysis put forth by APPrO's counsel could not have been completed without his input.) Legal counsel required his expertise at each stage of the proceeding, from preparing evidence and APPrO's extensive interrogatory responses, to strategizing before and during the oral hearing (his opinion was sought by counsel throughout oral testimony). In particular, Mr. Wolnik's expertise was crucial to getting Mr. Frank up to speed in advance of the oral hearing – in the interests of reducing costs, APPrO only involved Mr. Frank, a partner, for the purposes of the oral hearing, relying on a less expensive associate to handle most issues up to that point.

Mr. Wolnik's presence was also imperative to APPrO's witness preparation in this proceeding. As an example, when the Board's final hearing schedule made it impossible for our original expert witness (Mr. Todd Williams) to appear at the proceeding on behalf of Navigant, APPrO was obligated to fly in Mr. Ralph Zarumba from Chicago at the eleventh hour. It would have been impossible to properly prepare Mr. Zarumba on certain technical aspects in this case without Mr. Wolnik's involvement.

APPrO thus submits that any overlap between Mr. Wolnik and APPrO's counsel was reasonable and necessary in the context of this proceeding.

Comment #3 – Time Claimed Prior to Procedural Order #1 and After Close of Argument:

Union asserts that time claimed by Mr. Wolnik before Procedural Order #1 and after the close of argument should be disallowed. With respect to those hours claimed by Mr. Wolnik prior to Procedural Order #1, APPrO agrees that Union was not responsible for paying the costs during Union's customer consultations and will remove these costs (in the amount of \$4,894.31) from its claim.

Union also contests the minimal amount of time Mr. Wolnik claimed after the close of argument (\$1,305.15). We respectfully submit that the 3.5 hours entered by Mr. Wolnik are reasonable in the circumstances. APPrO needed its consultant to review and analyze the implications of the Board's final decision for the purposes of discussing potential next steps and advise the client. As such, APPrO should be able to recover these costs.

Conclusion: When contemplating this submission, it is vital to remember that, unlike some intervenors, any costs granted to APPrO only make up a portion of its actual costs (the claim submitted by APPrO does not cover all costs it has incurred in this proceeding). As stated above, APPrO only engages in those proceedings that directly impact its members, as they must make up the balance of any costs incurred. When APPrO does intervene, it only does so to the extent that it can contribute to a proceeding (APPrO does not passively attend those proceedings where it does not believe it can add value). In this proceeding, APPrO advanced a position that required a major commitment of time, money and resources from its members. We believe it would set a dangerous precedent to dismiss such reasonably incurred costs, potentially discouraging future applicants from making the commitment required to advance a proper case (with evidence) before the Board.

In summary, APPrO agrees that its cost claim should be adjusted to **\$190,851.35** (the original amount submitted minus the time entered prior to Procedural Order #1). For the reasons given above, APPrO submits that its claimed costs were reasonably incurred and are appropriately subject to recovery in accord with the Board's guidelines.

Yours very truly,

***Original signed by***

John Beauchamp

JB/mnm