

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF a motion by the Association
of Power Producers of Ontario to review and vary the final
Decision of the Ontario Energy Board in EB-2007-
0724/0725.

NOTICE OF MOTION

The Association of Power Producers of Ontario ("APPrO") brings this motion pursuant to Rule 42 of the Board's Rules of Practice and Procedure. The motion is for a review and variance of Part E ("Costs") of the Board's Decision dated April 29, 2008 (the "Decision"), and in particular, the amount of APPrO's cost claim.

I. Relief Sought

The relief sought in this motion is for:

1. an order permitting the Board to accept a supplemental cost claim from APPrO, for legal costs in the above-noted proceeding;
2. an order varying the cost claim of APPrO by an additional \$8,066.97, and requiring Union Gas Limited ("Union") and Enbridge Gas Distribution Inc. ("Enbridge") to pay same to APPrO; and,
3. an extension of time for the filing of this notice of motion.

II. Facts and Grounds for Motion

4. The Board has recognized that APPrO is eligible to recover its costs in this proceeding.
5. On March 5, 2008, further to the Board's Procedural Order No. 3 in the above-referenced matter and our letter of February 29th, 2008, Ogilvy Renault LLP submitted a cost claim on behalf of APPrO in the above-noted proceeding. The total cost claim submitted was for \$25,759.70 (herein referred to as the "Cost Claim").
6. On April 29, 2008, the Board issued the Decision and found that APPrO's Cost Claim (as adjusted to \$24,507) was reasonable and should be reimbursed by Union and Enbridge.
7. Upon further review and reconciliation of its legal and consultant costs incurred by APPrO in connection with the storage allocation proceeding, it was discovered that an Ogilvy Renault LLP invoice from January 2008 was not accounted for in the APPrO March 5, 2008 Cost Claim.
8. The invoice in question was Invoice No. 775404 dated January 21, 2008, and covers professional legal services as well as taxable disbursements for the month of December 2007 (the "Invoice").
9. Based on the Board's Cost Award Tariff, the amount that would be claimable by APPrO in connection with the Invoice is \$8,066.97.

10. The failure to include the Invoice in the initial Cost Claim was an inadvertent, administrative error. It would be unfair to punish the intervenor APPrO because of an inadvertent, administrative error.
11. APPrO is not seeking to have the Board review and vary a material aspect of the Board's Decision of interest to all parties, but only an administrative matter which impacts APPrO, Union and Enbridge.
12. The financial impact of granting this motion is relatively minor to Union and Enbridge. If the costs were allocated on the basis of the Board's 90:10 split as between Union and Enbridge, respectively, then the additional amount that Union would be required to pay would be \$7,260.27 and the amount that Enbridge would be required to pay would be \$806.70. The amount is, however, a material amount to an industry association such as APPrO.
13. Throughout the proceeding, APPrO sought to participate in an efficient and productive manner. APPrO believes that this is reflected in the reasonableness of the initial Cost Claim and the additional amount being claimed pursuant to this motion (i.e., \$8,066.97).
14. APPrO notified counsel to Enbridge and Union on May 9, 2008 that an invoice may have been omitted from the Cost Claim and that APPrO was in the process of verifying that that was the case. The process of verification took an additional two weeks, and as a result, this motion could not properly be brought within the 20 day time limit. Given that no party other than APPrO would be prejudiced by the timing of this motion, APPrO's priority was to conclusively determine that the Invoice was in

fact not part of the Cost Claim (regardless of whether such determination could be made within the 20 day time period) rather than bring a motion without such a conclusive determination (but within the time period).

15. For all of these reasons, APPrO respectfully requests that the Board allow APPrO to file a supplementary cost claim in relation to the Invoice.

16. APPrO further requests that the Board review the supplementary cost claim of APPrO and vary Part E of the Decision to allow APPrO recovery of the \$8,066.97.

III. Supporting Evidence

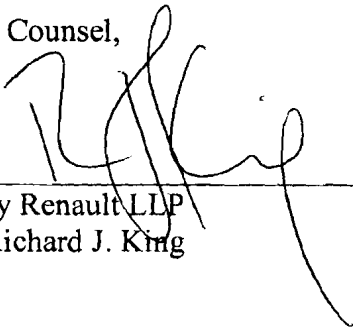
The following documentary evidence will be relied upon for this motion:

1. supplemental Cost Claim forms (including a copy of the Invoice dated January 21, 2008); and
2. such further evidence as counsel may advise and the Board permit.

All of which is respectfully submitted this 27th day of May, 2008.

ASSOCIATION OF POWER PRODUCERS OF ONTARIO

By its Counsel,



Ogilvy Renault LLP
Per: Richard J. King

Ogilvy Renault LLP
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street
Toronto ON M5J 2Z4

Tel: 416-216-2311
Fax: 416-216-3930
Email: rking@ogilvyrenault.com

TO: Union Gas Limited
Enbridge Gas Distribution Inc.

APPENDIX "B"

FORM 1

SUMMARY STATEMENT OF HOURS -CONSULTANTS AND LEGAL COUNSEL

A separate form is required for each consultant or legal counsel

<u>EB-2007-0724/EB-2007-0925</u> Board File Number		<u>ASSOCIATION OF POWER PRODUCERS OF ONTARIO</u> Party Name			
<u>RICHARD KING</u> Legal Counsel Name		<u>1996</u> Year of Call		<u>COILNY RENAULT LLP</u> Law Firm	
<u>Consultant Name</u>	<u>Years of Relevant Experience</u> (curriculum vitae must be attached)			<u>Consultant Firm</u>	
	Hours	Hourly Rate	Sub-total	GST	Total
Preparation	1	\$290.00	\$290.00	\$14.50	\$304.50
Attendance -Technical Conference					
Attendance -Settlement Conference					
Attendance -Oral Hearing					
Argument					
Case Management					
TOTALS	1		\$290.00	\$14.50	\$304.50
Note: All claims must be in Canadian dollars. If applicable, state exchange rate _____, and country of initial currency _____.					

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<u>PATRICK MORAN</u> Legal Counsel Name		<u>1989</u> Year of Call		<u>CGILVY RENAULT LLP</u> Law Firm	
Consultant Name		Years of Relevant Experience (curriculum vitae must be attached)		Consultant Firm	
	Hours	Hourly Rate	Sub-total	GST	Total
Preparation	14	\$290.00	\$4,060.00	\$203.00	\$4,263.00
Attendance -Technical Conference					
Attendance -Settlement Conference					
Attendance -Oral Hearing	11	\$290.00	\$3,190.00	\$159.50	\$3,349.50
Argument					
Case Management					
TOTALS	25		\$7,250	\$362.50	\$7,612.50
Note: All claims must be in Canadian dollars. If applicable, state exchange rate _____, and country of initial currency _____.					

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<u>JILL DALEY</u> Legal Counsel Name		<u>ARTICLING STUDENT</u> Year of Call		<u>OGILVY RENAULT LLP</u> Law Firm	
_____ Consultant Name		_____ Years of Relevant Experience (curriculum vitae must be attached)		_____ Consultant Firm	
	Hours	Hourly Rate	Sub-total	GST	Total
Preparation					
Attendance -Technical Conference					
Attendance -Settlement Conference					
Attendance -Oral Hearing					
Argument					
Case Management	1	\$100.00	\$100.00	\$5.00	\$105.00
TOTALS	1		\$100.00	\$5.00	\$105.00

Note: All claims must be in Canadian dollars. If applicable, state exchange rate _____, and country of initial currency _____.



BIOGRAPHIES

Richard J. King

**Lawyer
Partner**

Toronto
(416) 216-2311
rking@ogilvyrenault.com



Ontario Bar 1996

Practice Area(s)

Cleantech
Energy
Environmental Law
Mining and Resources
Recall and Crisis Management

BIOGRAPHY

PUBLICATIONS

Mr. King practises energy and environmental law. Mr. King also has extensive expertise in First Nations issues related to environmental matters and major development projects. His environmental law focuses particularly on the environmental aspects of corporate transactions (due diligence, negotiating agreements, working with consultants and engineers to assess liability risk, advising clients, liaising with regulators, etc.) and the development of major projects (assisting in the planning and conduct of environmental assessments, representing clients in hearings before regulatory tribunals, negotiating with affected stakeholders and parties, etc.). Recently, he was involved in obtaining the approvals associated with the construction of a new 1,000 MW combined-cycle gas-fired power plant near Sarnia, Ontario.

Mr. King has been involved in transactions and projects in virtually all economic sectors, including the mining, steel manufacturing, retail, forestry, power generation, food and beverage, petrochemical, waste management, high-tech and shipping sectors. Mr. King has appeared before courts at both the federal and provincial level on environmental matters.

Mr. King's energy practice is wide-ranging, and involves representing electricity and natural gas utility companies on regulatory matters (including facility approvals and rate applications) before the Ontario and National Energy Boards, and advising large industrial, commercial and institutional users of natural gas and electricity in respect of energy commodity purchase agreements. Mr. King has also acted for a number of First Nations in respect of energy development on Reserve lands and traditional territories.

Professional Involvement

Mr. King sits on the Board of Directors of Environmental Defence Canada. He recently sat on the Ontario Energy Board's Technical Team formed to establish filing requirements for transmission project approvals and the Ontario Waterpower Association's Task Team developing a provincial Class Environmental Assessment for Waterpower Development.

Mr. King has taught courses in Environmental Law and Environmental Sociology at the University of Western Ontario, Ryerson Polytechnic University and Wilfrid Laurier University. He is currently an Adjunct Professor of International Environmental Law at Osgoode Hall Law School.

Education

LL.M. (London School of Economics and Political Science, 1995)
LL.B. (Osgoode Hall Law School, 1993)
M.E.S., Environmental Studies (York University, 1993)
B.Sc. (University of Western Ontario, 1989)

Patrick Moran

Lawyer

Toronto
(416) 216-2989
pmoran@ogilvyrenault.com

Ontario Bar 1989

Practice Area(s)
Energy
Environmental Law
Mining and Resources



BIOGRAPHY

Mr. Moran practises energy and environmental law, focussing primarily on regulatory matters.

Mr. Moran provides advice on energy matters to electricity distributors, transmitters and generators. He also advises clients on environmental due diligence issues arising out of transactions and compliance matters. He has acted on behalf of clients before a number of tribunals, including the Ontario Energy Board, the Ontario Environmental Review Tribunal and the Ontario Municipal Board. He has also appeared before every level of court on energy and environmental matters.

Prior to joining the firm, Mr. Moran was Board Counsel with the Ontario Energy Board for four years. As Board Counsel, he had responsibility for all of the Board's litigation, from hearings before the Board to appeals from Board decisions. Mr. Moran has appeared in numerous gas and electricity rate applications, leave to construct applications, and merger and acquisition applications. Mr. Moran also advises on licensing and compliance matters, including revisions to the Codes of Conduct that apply to gas and electricity retailers and gas distributors, and was involved in a major rewrite of the Transmission System Code.

Prior to serving as Board Counsel, Mr. Moran was Crown Counsel at the Ontario Ministry of Environment for eleven years. He has a comprehensive knowledge of environmental law based on his work on compliance and enforcement matters and appeared in every major environmental assessment hearing held in Ontario from 1990 to 1998.

Professional Involvement

Mr. Moran is a member of the Law Society of Upper Canada and the Canadian Bar Association and has been a regular Public Law instructor at the Ontario Bar Admission Course.

Education

LL.B. (Queen's University, 1984)
B.Sc. (St. Francis Xavier University, 1979)

**OGILVY
RENAULT**

LLP / S.E.N.C.R.L., s.r.l.

ASSOCIATION OF POWER PRODUCERS OF ONTARIO
(APPRO)

01015413-0001

RE: Natural Gas-Electricity Interface Proceeding

FEE DETAIL

Date	Timekeeper	Description	Hours
3/12/07	Richard J. King	Review gas storage evidence.	1.00
3/12/07	Patrick Moran	Conference call regarding draft evidence; review revised evidence and discuss same with J. Wolnik.	2.50
4/12/07	Patrick Moran	Conference call with J. Wolnik and R. Cary regarding draft evidence; review further revisions from J. Wolnik and discuss same with J. Wolnik and finalize evidence for filing.	2.50
13/12/07	Patrick Moran	Review Union reply evidence; meeting with J. Wolnik and R. Cary for hearing preparation.	3.50
14/12/07	Patrick Moran	Preparation for hearing.	2.50
17/12/07	Patrick Moran	Preparation for cross-examination and attendance at hearing.	6.00
19/12/07	Jill Daley	Pick-up documents at the Ontario Energy Board for P. Moran.	1.00
19/12/07	Patrick Moran	Review transcripts and prepare for presentation of APPrO case.	3.00
20/12/07	Patrick Moran	Attend hearing for presentation of APPrO evidence.	5.00
TOTAL FEES			\$12,560.00

DISBURSEMENTS - TAXABLE

Copies	0.50
Long distance calls	4.29
Colour photocopies	25.00
Courier service	13.04
	<hr/>
	\$42.83

INVOICE: 775404

APPENDIX "B"

FORM 2

SUMMARY OF DISBURSEMENTS

<u>EB-2007-0724 / EB-2007-0725</u> Board File Number		<u>ASSOCIATION OF POWER PRODUCERS OF ONTARIO</u> Party Name	
<u>OGILVY RENAULT LLP</u> Party or Group that made the disbursement			
	Net Cost	GST	
Photocopies	\$0.50	\$0.03	
Printing			
Fax			
Courier	\$13.04	\$0.65	
Telephone	\$4.29	\$0.22	
Postage			
Transcripts			
Travel: Air			
Travel: Car			
Travel: Rail			
Travel: Other ()			
Taxi or Airport Limo			
Accommodation			
Meals			
Other (y) Colour photocopies	\$25.00	\$1.25	
Sub-totals	\$42.83	\$2.15	Grand Total \$44.98
Notes 1. All claims for disbursements must include receipts where practicable. 2. All claims must be in Canadian dollars. If applicable state exchange rate _____ and country of initial currency.			

APPENDIX "B"

FORM 3

AFFIDAVIT IN SUPPORT OF COST CLAIM

EB-2007-0724/EB-2007-0925

Board File Number

ASSOCIATION OF POWER
PRODUCERS OF ONTARIO

Party Name

Items Claimed excluding GST

Legal/Consultant Fees	+	Disbursements	=	Net Sub-Total
\$ <u>7,640</u>		\$ <u>42.83</u>		\$ <u>7,682.83</u>

Goods and Services Tax

..... Full Registrant Qualifying Non-Profit (GST at 2.5%)
<input checked="" type="checkbox"/> Unregistered (GST at 5%) Tax Exempt (no GST).....
Other _____ GST at _____ %	

Total Cost Claim

Net Sub-Total	+	Total GST Claimed	=	Total Cost Claim
\$ <u>7,682.83</u>		\$ <u>384.14</u>		\$ <u>8066.97</u>

I, (name) MONA PINCHIS, of the (City, Town, etc.) CITY in the
(County, Regional Municipality, etc.) of TORONTO, **MAKE OATH AND SAY:**

1. I am a representative of the above noted party (the "party") and as such have knowledge of the matters attested to herein.
2. I have examined the above Cost Claim and all of the documentation in support of it.
3. The above Cost Claim represents only costs incurred directly and necessarily by the party for the purpose of its intervention in the Ontario Energy Board process (the file number of which is set out above).

SWORN (OR AFFIRMED) BEFORE ME at the (City, Town, etc.) of _____,
in the (County, Regional Municipality, etc.) of TORONTO
on (date) MAY 27, 2008.

[Signature]
COMMISSIONER for taking Affidavits

[Signature]
Signature of Deponent