



EB-2005-0520

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

AND IN THE MATTER OF an Application by Union Gas
Limited for an Order or Orders approving or fixing just and
reasonable rates and other charges for the sale, distribution,
transmission and storage of gas commencing January 1,
2007.

BEFORE: Pamela J. Nowina
Presiding Member and Vice Chair

Paul Sommerville
Member

Ken Quesnelle
Member

DECISION ON COST AWARDS

September 12, 2006

Background

Union Gas Limited ("Union") filed an application dated December 15, 2005 with the Ontario Energy Board (the "Board") under section 36 of the *Ontario Energy Board Act, 1998* for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas commencing January 1, 2007. The Board assigned file number EB-2005-0520 to the application.

Energy Probe Research Foundation ("Energy Probe"), Canadian Manufacturers & Exporters ("CME"), Pollution Probe ("Pollution Probe"), the Vulnerable Energy Consumers Coalition ("VECC"), the Green Energy Coalition ("GEC"), the Consumers Council of Canada ("CCC"), the Industrial Gas Users Association ("IGUA"), the School Energy Coalition ("SEC"), the Wholesale Gas Service Purchasers Group ("WGSPG"), the London Property Management Association ("LPMA"), the Federation of Northern Ontario Municipalities and the Cities of Greater Sudbury and Timmins ("FONOM"), the Low Income Energy Network ("LIEN"), the Ontario Association of Physical Plant Administrators ("OAPPA"), and Mr. Marc Crockford requested and were granted intervenor status in the proceeding. Energy Probe, CME, Pollution Probe, VECC, GEC, CCC, IGUA, SEC, WGSPG, LPMA, FONOM, LIEN, OAPPA and Mr. Crockford were also deemed to be eligible for cost awards in the proceeding.

On June 29, 2006, the Board issued its Decision with Reasons (the "Decision"). In its Decision, the Board stated that parties that were found eligible for cost awards were to submit any claims for an award of costs to the Board Secretary and Union by July 31, 2006. The Board also stated that it would not accept claims received after that date. Parties were required to include adequate documentation to support any of their cost claims.

Union was given until August 11, 2006 to object to any of the cost claims. The objections were to be filed with the Board and copied to the claimant. The Board noted that it would take into consideration comments from Union prior to issuing any final judgment on awards.

Issues Regarding the Cost Claims

Four parties, GEC, FONOM, Pollution Probe and Mr. Crockford, did not submit their final cost claims by July 31, 2006. GEC, by email of August 4, 2006, informed the Board that GEC would not be submitting a claim for costs in this proceeding. FONOM submitted its claim on August 4, 2006 while Pollution Probe submitted its claim on August 8, 2006. In its letter that accompanied its cost claim, Pollution Probe indicated that it was late in filing its claim because it was unsure as to whether it would be more appropriate to submit its costs in the Union proceeding or at a later date in the Generic Natural Gas DSM hearings. Pollution Probe indicated that it submitted the costs now but was willing to submit them as part of the Generic Natural Gas DSM hearings if the Board preferred. Mr. Crockford has submitted three interim cost claims throughout this proceeding but did not file a final consolidated cost claim.

On March 2, 2006 and August 11, 2006, Union submitted its comments on the cost claims of Mr. Crockford, VECC, LIEN and WGSPG. Union noted that Mr. Crockford had submitted three “interim” claims but that Union had only received two. Union also submitted that Mr. Crockford had provided insufficient documentation supporting his cost claims and that his email response of May 8, 2006 to the Board's May 3, 2006 letter did not provide adequate justification for an award of costs especially since Mr. Crockford was unable to show how he contributed to a better understanding by the Board of the rate case issues.

In relation to the WGSPG, Union referred to its March 2, 2006 letter in which Union asked the Board to consider whether the WGSPG provided sufficient justification to warrant a “special circumstance” as outlined in Section 3.05 or the Practice Direction on Cost Awards. The WGSPG responded to that claim by submitting that the Board had

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already made its determination as to the cost eligibility of the WGSPG in the Board's letter of February 10, 2006 in which the Board stated that the WGSPG is eligible to apply for an award of costs.

Union asked the Board to consider the degree of overlap between VECC and LIEN and whether they made reasonable efforts to combine their intervention as both parties represent less affluent or low-income residential customers. Union further noted the Public Interest Advocacy Centre (the "PIAC"), which represents VECC, is a member of LIEN. The PIAC responded to Union's comments on behalf of VECC. The PIAC stated that VECC intervened on all issues whereas LIEN's intervention was only in relation to one issue, the low income customer subsidy rate. The PIAC stated that on the key LIEN issue regarding the rate subsidy, VECC made no comments or submissions. The PIAC also stated that while it is a member of LIEN, in this proceeding it was solely representing the interests of VECC. The PIAC therefore submitted that there was no duplication in the interventions of VECC and LIEN and that VECC should be awarded all if its legitimately incurred costs in this proceeding. LIEN did not respond to Union's request to the Board.

Board Findings

In its Decision, the Board stated that it would not accept any claims filed after July 31, 2006. Although Mr. Crockford did not file a final, consolidated cost claim, the Board will accept his three interim cost claims, all filed before July 31, 2006, as representing his total costs claimed in relation to participating in this proceeding. The Board accepts Pollution Probe's late filing because there was some confusion as to whether Pollution Probe's costs should be filed as part of this proceeding or at a later date in relation to the Generic Natural Gas DSM hearing. The Board will deal with that matter below. Lastly, the Board finds it troubling that FONOM's claim for costs was submitted past the July 31, 2006 deadline without explanation as to why the claim was late. In view of the clear language in the decision regarding the acceptance of late claims, the Board elects to not award costs to FONOM.

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The Board considers it appropriate for Pollution Probe's costs incurred participating in this proceeding to be dealt with in this decision and therefore awards costs accordingly.

As stated above, Mr. Crockford submitted three interim cost claims. By letter dated May 3, 2006, the Board informed Mr. Crockford that the interim cost claim he had submitted up to that point was deficient in a number of respects. Mr. Crockford was also informed that it was unlikely that his claim for consultant's fees would be recognized by the Board due to the fact that he represented only his own interest and that he should govern himself accordingly. The Board does not believe that Mr. Crockford's contribution was effective in contributing to the Board's process. Mr. Crockford's participation in the hearing was extremely minimal and he did not contribute to a better understanding by the Board of the issues in the proceeding. The Board has considered sections 4.03 and 5.01 of the Board's Practice Direction on Cost Awards in concluding on this matter. Subject to the next sentence, the Board therefore finds that Mr. Crockford is not entitled to any of his claimed costs in relation to his participation in this proceeding. Mr. Crockford will be allowed to recover 100 percent of his reasonably incurred, appropriately documented and supported disbursements.

The Board remains satisfied that WGSPG is eligible for cost awards in this proceeding. Their submissions and participation were of assistance in illuminating the issues in this proceeding. With regard to Union's concern that WGSPG had not provided sufficient justification to warrant a "special circumstance" as outlined in 3.05 of the Practice Direction on Cost Awards"; the Board considers the fact that this was a rate setting proceeding and that the WGSPG members are rate payers under the M9 and M10 rate classes to be sufficient justification. Documentation of the aforementioned is found in WGSPG's notice of Intervention dated February 8, 2006.

The Board accepts the submissions of the PIAC and finds that there was no duplication of interventions in this proceeding. The Board notes that the determination of duplication of intervention between LIEN and VECC is an issue that will need to be determined on a case-by-case basis. Intervenors may find that at times they represent constituents that share common interests in general. Costs will not be considered

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unreasonable due to duplication so long as the intervenors remain focused on separate issues in a proceeding. All prospective intervenors should be mindful of section 4.03 of the Practice Direction on Cost Awards when submitting their intervention notices.

The Board finds that Energy Probe, Pollution Probe, VECC, CME, CCC, IGUA, SEC, WGSPG, LPMA, LIEN and OAPPA are entitled to 100 percent of their reasonably incurred costs of participating in this proceeding.

The Board directs Union to pay the cost awards of the eligible parties for this proceeding immediately upon receipt of the Board's cost orders.

The Board also directs Union to pay the Board's costs of, and incidental to, this proceeding immediately upon receipt of the Board's invoice.

Dated at Toronto, September 12, 2006.

Signed on the behalf of the Panel

Original Signed By

Pamela J. Nowina

Presiding Member and Vice Chair