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July 7, 2008

BY E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: EB-2008-0106 - Commodity Pricing, Load Balancing and Cost Allocation Methodologies for Natural Gas Distributors in Relation to Regulated Gas Supply

We are the solicitors for Union Gas Limited ("Union"). We are responding to Notices of Intervention from the London Property Management Association ("LPMA") and the Federation of Rental Housing Providers of Ontario ("FRPO").

Union opposes granting intervention status to both these entities or, in the alternative, seeks orders of the Ontario Energy Board (the "Board") limiting the participation of both or, in the further alternative, limiting these entities' right to recover costs.

On June 2, 2008, the LPMA filed a Notice of Intervention in this proceeding. The Notice says that it represents "property managers and those who own/operate residential income properties in the City of London and surrounding communities" (i.e. the rental market). The LPMA notice was filed on time, in accordance with the Board's Notice of Proceeding dated May 29, 2008.

On June 25, 2008, FRPO also filed a Notice of Intervention. The FRPO also purports to represent the rental market. The FRPO Notice was filed late, after the deadline specified in the Board's Notice. As a result of FRPO's late filing the issue of the overlapping nature of its interests and those of the LPMA was not raised until after the Board mandated time for responding to Notices of Intervention. Accordingly, Union submits that the Board, if it is prepared to consider FRPO's Notice of Intervention at all, should also consider the matters raised in this letter.

Both organizations representing the rental market in Union's franchise area seek intervention in a representative capacity. In other words, neither the LPMA nor the FRPO has a direct or personal interest in these proceedings, or to be, personally, a customer of Union's. Rather, both organizations seek intervenor status on the basis of the interests of the underlying customers they represent.

Further, both organizations state that they intend to participate fully, including interrogatories, cross-examination and argument and to seek an award of costs.

While the LPMA and FRPO are two separate organizations, it is clear that they both:

1. represent the identical interests, property managers and owners/operators of residential rental properties;

2. represent overlapping Union customers - the property managers and owners/operators in the City of London and surrounding communities; and

3. have the identical concerns - the cost of natural gas utility service, including load balancing and delivery services, to the rental market in Union's franchise area.

Insofar as their interventions relate to natural gas utility service in the City of London and surrounding area, there is literally nothing to distinguish these two entities. The customers which both associations represent are exactly the same. There is cross representation on their respective Boards of Directors. In addition, with respect to the FRPO, at least one other intervenor, the Building Owners and Managers Association ("BOMA"), has acknowledged that it represents the FRPO's interests. In a recent letter to the Board, dated May 15, 2008, BOMA stated, "we have successfully represented the interests of both FRPO and RealPac in the past and continue to do so". BOMA is represented by R. Aiken, who is also the LPMA representative.

In Union's submission, there is no need for two intervenors representing the identical interest, the identical customers and the identical concerns, to be granted intervenor status. In Union's submission, this would run contrary to the Board's *Practice Direction on Costs*.

As the Ontario Superior Court of Justice said in *Stadium Corp. of Ontario v. Toronto (City)*:

> Proposed intervenors must be able to offer something more than the repetition of another party's evidence or a slightly different emphasis on arguments [made] squarely by the parties.[1]

The granting of intervenor status is a matter of discretion which should be declined if the Board is satisfied that the interest of the applicant is already adequately represented.[2]

As the stated intention of both intervenors is to participate actively, there will be two intervenors representing the same interest when participating in pre-hearing matters, asking interrogatories, filing evidence, cross-examining and submitting argument . This will have the effect of conferring an unfair advantage on these customers by providing them with "two kicks at the can" and will, inevitably, lead to longer submissions on preliminary issues, longer examinations, longer hearings, lengthier arguments and increased costs.

Secondly, the cost of two representatives for the same customers is a burden that ratepayers as a whole, and Union, ought not to have to bear.

In the alternative, if the Board, contrary to these submissions, determines that it is appropriate to grant intervenor status to both organizations, Union nevertheless requests that a condition of their participation in Union's proceedings be joint participation through one counsel. Only in this way can duplication and inconsistency problems, with attendant added time burdens and cost, be avoided. If both organizations, representing the identical interest, wish to intervene, let them do so with one voice and without collateral advantages over other intervenors who only get

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[1] (1992), 10 O.R. 203 at 208

[2] *Re Starr and Township of Puslinch* (1976), 12 O.R. 2d 40 (H.C.J.) at 46

to cross-examine and argue once. Requiring joint participation through one counsel will also avoid the unseemly problem of two intervenors, representing the identical interest, taking different positions on issues before the Board.

In the further alternative, if the Board determines, contrary to Union's submissions, that intervenor status should be granted to both organizations, Union requests that these intervenors only be entitled to one set of costs. The grounds for this submission are essentially the same as those listed above. Two intervenors representing the identical interest is unnecessary and duplicative. If the rental property owners are successful in their bid to be represented twice, they should at least not recover costs twice for indulging in that luxury.

This issue has been before the Board previously. In RP-2003-0063, the "School Boards" and "School Officials" both sought intervenor status in Union's 2004 rate case. Union opposed representation of the school boards by two representative organizations, in part on the basis that dual representation could lead to a circumstance where two intervenors representing the identical interest and the identical customers of Union might take different or contradictory positions on issues before the Board.

While the Board permitted interventions by both the School Officials and the School Boards it did order that both parties be awarded 50% of their reasonably incurred costs.

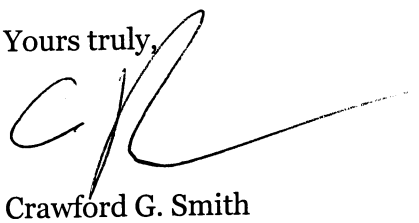
In conclusion, therefore, Union submits that:

1. intervenor status should be limited to one representative of the rental market; or

2. if intervenor status is granted to both representatives, it be on the condition that the LPMA and the FRPO be represented by the same representative and only have the opportunity to ask one set of interrogatories, conduct one cross-examination, and file one argument, etc.; or

3. only one set of costs be awarded to these intervenors in any event.

Yours truly,



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