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SENT BY COURIER

Toronto, March 6, 2009

2/10/09
Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700
2300 Yong Street
Toronto ON M4P 1E4

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ONTARIO ENERGY BD

EB-2008-0220

OED BOARD SECRETARY	
File No:	Sub File: <i>26(19)</i>
Pancl	<i>DC</i>
Licensing	<i>DB</i>
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Dear Ms. Walli:

RE: Union Gas Limited 2009 Rates
Board File No. EB-2008-0220

We are writing to respond to the March 2, 2009 letter from Union Gas Limited ("Union") to the Board questioning the time spent in this proceeding by Mr. John Wolnik (Elenchus Research Associates) and professionals in this firm in providing services to our client, the Association of Power Producers of Ontario ("APPRO"). Union has also contested the cost claim submitted by the Canadian Manufacturers & Exporters ("CME") in this proceeding. We have reviewed the correspondence of Mr. Thompson of March 6, 2009 responding to Union's cost claim objection, and support Mr. Thompson's submissions in their entirety. In addition to Mr. Thompson's submissions, we provide the following addition information.

Union's chief critique of APPRO's cost claim is that the total hours spent by APPRO's consultant (25.75 hours) and legal counsel (11.5 hours) exceeds the total average hours claimed by other intervenors. No further detail is provided by Union as to which elements of the docketed professional time was duplicitous, excessive or otherwise problematic.

We note that Union chose to "compare" intervenor cost claims solely on the basis of hours docketed, and deliberately did not provide a comparison of the monetary amount claimed by APPRO as compared to other intervenors. As a result of that approach, Union presents an intentionally skewed view of APPRO's cost claim which we must now correct.

What Union chose to ignore in its March 2nd letter is the following:

- With respect to my firm's legal fees, 10.0 of the 11.5 total hours spent on this matter were carried out by a junior lawyer (Mr. Jonathan Myers), for whom the Board's tariff is \$170. Only 1.5 hours of my time was docketed to the file (at the Board's tariff rate of \$290). To the extent possible, we sought to utilize Mr. Myer's time (at the lowest legal tariff rate) whenever possible in respect of this matter. As a result, the total legal fees claimed by my firm (inclusive of GST) is \$2,241.75.
- With respect to Mr. Wolnik's consulting time, the story is the same. Mr. Wolnik has thirty-five years of expertise in the gas industry (the first 19 of those being at Union Gas). Although entitled to claim at the highest consultant tariff rate of \$330, Mr. Wolnik charges APPrO (and claims in this proceeding) an hourly rate of \$250 for all of his time. As a result, the total consultant fees claimed by Mr. Wolnik's firm (inclusive of GST) is \$6,759.38.
- The net result of utilizing junior legal time where possible, and billing at a consultant rate below the maximum hourly rate is a cost claim that is just over \$9,000 (including taxes). We expect that when viewed on the basis of total costs, APPrO's cost claim was not abnormally high when compared to the claims of other intervenors.

In addition to deliberately presenting a skewed view of the intervenor cost information, Union's approach of contesting intervenor cost claims on the simple basis of hours spent is almost pointless. Intervenor hours will always vary, because the nature of any intervenor's participation in a particular case will differ. For instance:

- Not all issues in a particular proceeding will be of interest to all intervenors. In this particular proceeding, for instance, it appears that only APPrO and CME had a substantial interest in the upstream transportation issue (for obvious reasons). In addition, it appears that VECC and Energy Probe had a more narrow focus on the issues. As Mr. Thompson pointed out in his March 6th correspondence, VECC and Energy Probe relied upon written arguments prepared and submitted by others. Both of these facts might account for APPrO and CME both spending more time on the matters.
- Most of the intervenors are industry or interest-based associations, each of which will have its own internal process for conveying information between legal counsel/consultant on the one hand, and association members on the other hand. From APPrO's perspective, a "working group" is established for each Board regulatory proceeding. In some cases (where the issues at hand are of particular interest), APPrO's working group will be larger in size and typically require more consultation in order to formulate a consensus position on information requests and argument. So for APPrO, instructions to legal

counsel and consultants is by committee, and the level of interaction between APPrO members and its counsel/consultant varies significantly from proceeding to proceeding.

APPrO (and those firms representing APPrO) take very seriously any implication that it has abused any Board cost award process – particularly when the implication is by way of a bald allegation by Union without any attempt to understand (or make clear to the Board) the reason for any elevated level of participation. APPrO has consistently participated responsibly and cost-effectively in all Union Gas applications in the past (often relying on other intervenors to do the bulk of the work on more generic issues), typically limiting its intervention to issues of interest to generators and large users.

For all of the above reasons, and those previously submitted by Mr. Thompson, we urge the Board to approve the costs of both APPrO and CME, as submitted.

Should you have any further questions, please contact me directly.

Yours very truly,



for: Richard King

RK/mnm

cc. Chris Ripley (Union Gas Limited)
Interested Parties (EB-2008-0220)