

November 7, 2008

Kirsten Walli, Board Secretary
ONTARIO ENERGY BOARD
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

Re: EB-2008-0154 - Union Gas Limited - Notice of Motion for Review of Board's Decision in EB-2008-0034.

Industrial Gas Users Association ("IGUA") Statement of Costs and Submissions on Cost Responsibility.

Enclosed please find the Statement of Costs of IGUA for participation in the captioned proceeding.

The Panel in this matter has asked parties when submitting their cost claims to address the question of cost responsibility. Noting that success on this motion would have benefited only Union's shareholder, and noting that the review failed at the threshold test, the Panel has raised the question: *Should Union's shareholder bear cost responsibility for this motion?*

In IGUA's submission, the Board could appropriately award costs, in whole or in part, against Union's shareholder in this instance. In making this submission, IGUA has considered the following:

1. There was no reasonable argument that the 2007 Deferral Account Decision¹ and the NGEIR Decision² were inconsistent. This is the conclusion necessarily resulting from the failure of this motion at the threshold level.

In the NGEIR Decision, the Board expressly rejected recording margins on existing long-term storage contracts and new long-term storage contracts separately. Instead, the Board expressly directed a "proxy" mechanism under which declining percentages for ratepayer sharing of revenues were used *"to recognize that... a larger part of Union's total long-term margins will be generated by new transactions"* [emphasis added]. The description of this proxy mechanism is consistent only with inclusion of revenues from new long-term storage contracts in Account 179-72.

In the 2007 Deferral Account Decision the Board directed Union to record net revenues from new long-term storage contracts in Account 179-72, in a manner entirely and clearly consistent with the direction in the NGEIR Decision.

2. As noted by IGUA in its August 11 *Submissions in Response* herein³, the passages of the NGEIR Decision which described the proxy mechanism were omitted by Union in its argument. This omission was despite the fact that these passages immediately followed those which Union reproduced and expressly relied on in its argument. The direct connection of the omitted passages with the passages on which Union relied is obvious, and the central import of the omitted passages to the issues raised by Union was clearly and readily foreseeable. This Panel recognized as much in repeated use of the word "clear" in its decision disposing of this aspect of Union's motion⁴. This conspicuous omission belies a motion formulated on a foundation that, at best, was conceived without the due care and balance generally expected of a regulated utility coloured with a public responsibility. This leads to the conclusion that it was the shareholder's interests that governed Union's pursuit of this motion.
3. The argument by Union that the 2007 Deferral Account Decision and the 2006 Deferral Account Decision⁵ were inconsistent was also a strained one from the outset. Again, this is the conclusion necessarily resulting from the failure of this motion at the threshold level.

In the 2006 Deferral Account Decision the Board expressly distinguished between regulatory accounting treatment and conventional CICA accounting treatment. As a regulated utility this distinction should be crystal clear to Union. This Panel found Union's argument on inability to comply with both decisions *"not convincing"*.

4. Finally, Union ignored the relatively narrow scope of the 2006 Deferral Account Decision, which, as this Panel recognized, applies only to deferred taxes for the period 1997-2006. Instead, Union brought forward a broad assertion that it was "unable to comply" with both the 2006 and the 2007 decisions. One must question the even handedness of such position, particularly in the context of a regulatory proceeding

¹ June 3, 2008 decision in EB-2008-0034.

² November 7, 2006 decision in Natural Gas Electricity Interface Review.

³ Paragraphs 22 and 40 to 42.

⁴ Page 5, first full paragraph of the decision disposing of the motion.

⁵ August 17, 2007 decision in EB-2007-0598.

initiated by a utility fully cognizant of the nature of regulatory accounting and coloured with a public responsibility. Again, this leads to the conclusion that it was the shareholder's interests that governed Union's pursuit of this motion.

We should note that these submissions should not be taken as advocating that any time a motion fails at the threshold level there is necessarily indication that the motion was not reasonably advanced in the first place. However, in this instance, IGUA submits that this is precisely the indication from such failure.

Your truly,
MACLEOD DIXON LLP



Ian A. Mondrow
IAM/np
Enclosure

- c. Murray Newton (IGUA) - by email
- Mark Kitchen (Union Gas) - by email
- Joanne Clark (Union Gas) - by email

125082.v1

APPENDIX "B"

FORM 3

AFFIDAVIT IN SUPPORT OF COST CLAIMS

EB-2008-0154
Board File Number

Industrial Gas Users Association (IGUA)
Party Name

Items Claimed excluding GST
Legal/Consultant Fees

Disbursements

Net Sub-Total

\$3,654.00

\$15.60

\$3,669.60

Goods and Services Tax

 Full Registrant

 Unregistered (GST at 5%)

 Other

GST at %

Qualifying Non-Profit
(GST at 2.5%)

 ☒ Tax Exempt (no GST)

Total Cost Claim

Net-Sub-Total

Total GST Claimed

Total Cost Claim

\$3,669.60

\$3,669.60

I, Ian Mondrow, of the City of Thornhill, in the Regional Municipality of York **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 of Toronto in the County of York on November 7, 2008


COMMISSIONER for taking Affidavits


Signature of Deponent

APPENDIX "B"

FORM 1

SUMMARY STATEMENT OF HOURS - CONSULTANTS AND LEGAL COUNSEL

A separate form is required for each consultant or legal counsel

EB-2008-0154		Industrial Gas Users Association (IGUA)			
Board File Number		Party Name			
Ian Mondrow	1991	Macleod Dixon LLP			
Legal Counsel Name	Year of Call	Law Firm			
Consultant Name		Consultant Firm			
Years of Relevant Experience (curriculum vitae must be attached)		17			
	Hours	Hourly Rate	Sub-Total	GST	Total
Preparation	12.6	\$290	\$3,654.00		\$3,654.00
Attendance - Technical Conference					
Attendance - Settlement Conference					
Attendance - Oral Hearing					
Argument					
Case Management					
TOTALS	12.6	\$290	\$3,654.00		\$3,654.00

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

Union Gas Limited
EB-2008-0154

Union Motion for Review - Storage Revenue

IGUA - Matter 261336					
Ian Mondrow Time Entries					
Time ID	Time Date	Narrative	Time		
3644280	06/30/2008	Review e-mail and materials from M. Newton re Union motion for review on storage transition accounting and voice message to M. Newton to discuss	0.3		
3656138	07/10/2008	Review Peter Thompson letter; review OEB web drawer re any additional notices from the Board re Union motion; draft letter re change of contact information and instructions to staff for filing and circulation	0.6		
3659400	07/16/2008	Review PO and advice note to M. Newton;	0.5		
3661593	07/21/2008	Review Union's notice of motion to Div. Crt. for extension of time within which to perfect appeal	0.2		
3685656	08/01/2008	Review Union argument and other submissions; draft IGUA's response	4.9		
3685659	08/02/2008	Review and revise proposed submission and send to M. Newton with covering note; e-mails to S. Chui re formatting instructions and filing instructions to come	2.5		
3685664	08/08/2008	Review draft submission and detailed message left for revisions and filing instructions	0.7		
3686852	08/18/2008	Review responses filed by other parties;	0.4		
3764930	11/03/2008	Detailed review of motion decision and consider IGUA costs position; note to M. Newton with recommendations on cost responsibility position; note to N. Pellegrini re costs claim preparation	1.5		
	11/07/2008	Draft submission re costs responsibility for filing with costs statements	1		
		Total hours	12.6		

APPENDIX "B"

FORM 2

SUMMARY OF DISBURSEMENTS

EB-2008-0154 Board File Number	Industrial Gas Users Association ("IGUA") Party Name Industrial Gas Users Association		
Macleod Dixon LLP Party or Group that made the Disbursement			
	Net Cost	GST	
Photocopies			
Printing			
Fax			
Courier	\$15.60		
Telephone			
Postage			
Transcripts			
Travel: Air			
Travel: Car			
Travel: Rail			
Travel: Other ()			
Taxi or Airport Limo			
Accommodation			
Meals			
Other ()			
Sub-totals	\$15.60	\$0.00	Grand Total <div style="border: 2px solid black; padding: 2px; display: inline-block; margin-left: 10px;">\$15.60</div>
Notes 1. All claims for disbursements must include receipts where applicable 2. All claims must be in Canadian dollars. If applicable state exchange rate _____ and country of initial currency _____			

Disbursement Inquiry
IGUA - Matter 261336

Date	Billed Amt	GST	Narrative
08/15/08	\$15.60		Vendor: All Canadian Courier Corp. Invoice 46943 date: 8/15/2008
Total Disb.		\$15.60	