PUBLIC INTEREST ADVOCACY CENTRE

LE CENTRE POUR LA DEFENSE DE L'INTERET PUBLIC

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July 03, 2014

Via Email

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge St.
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: Vulnerable Energy Consumers Coalition (VECC)
Reply re: Decision on Cost Awards
EB 2013-0115 - Burlington Hydro Inc.
EB 2013-0155 – Niagara-on-the-Lake Hydro Inc.
EB 2013-0159 - Oakville Hydro electricity Distribution Inc.

The Vulnerable Energy Consumers Coalition (VECC) is in receipt of the Board decisions on cost awards in the above noted matters. In each of the above Decisions, the Board applied its rule of thumb that limits an intervenor to only one funded representative attending at the settlement conference associated with each proceeding. We have noted in previous correspondence (see attached letter of July 10, 2013) to the Board why it might not be efficient to mechanically apply this rule (which, as far as VECC is aware, is not contained in any Rule or Guideline promulgated by the Board).

VECC's representation is structured so as to avoid a duplication of effort by its representatives. Counsel receives client instructions and makes decisions on the positions to be advanced at the settlement conference using the information developed by its very experienced consultants. Counsel does not attempt to absorb all the evidence but to develop an understanding that befits the role. Most of the time, this strategy results in smaller cost claims by VECC, particularly in large cases, and more efficient interventions.

It is usually helpful in the process if VECC's technical consultant is present at the opening of the settlement conference to resolve technical questions on the evidence and to help intervenors formulate the offer. Sometimes, when the conference is dealing with particularly complex technical issues the consultant will be called back in to assist the intervenors. Without any exaggeration, it can be said that this approach has been very helpful for settlement in a large number of cases particularly those where the regulated utility is present with a full retinue of witnesses, consultants and counsel, or where the filing itself lacks clarity unresolved by the preliminary avenues of discovery.

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However, we are appreciative of the reason for the practice of only paying for only one representative and urge only that some discretion be exercised such that the relatively small amount of time where the consultant and lawyer's time overlap be remunerated. The alternative of having counsel invest more time in preparation than ordinarily warranted is not prudent from a cost standpoint. Nor is the concept that a consultant or counsel must never be compensated in the event of an overlap, despite the evident usefulness of an additional presence participating in a minor but significant way in settling the issues.

We would like the Board to consider and rule on this issue, without the necessity of appealing the aforesaid cost determinations given the amounts at stake in the individual Decisions. VECC suggests that the best way for this to occur is by way of a submission justifying the overlapping times the next time a cost award application is made by the intervenor. Could VECC please be advised whether this may be an appropriate way to ensure Board consideration of our request for relief from the application of the rule of thumb cited above?

Thank you.

Yours truly,

Michael Janigan
Counsel for VECC

Burlington – Kathi Farmer - kfarmer@burlington.com
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Oakville – Mary Caputi – mcaputi@oakvillehydro.com

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July 10, 2013

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

Re: Coat Award Decision - July 5, 2013
Toronto Hydro- Electric System Limited EB 2012-0064

Dear Ms. Walli:

I am counsel for the Vulnerable Energy Consumers Coalition (VECC) in the above-noted matter. We are in receipt of the Decision of the Board of July 5, 2013 with respect to the award of costs following the conclusion of the proceeding. We would note that the Decision puts forward or confirms a practice that provides for the award of costs to only one representative of an intervenor for attendance at an Alternate Dispute Resolution (ADR) conference in a proceeding. We do not seek an appeal of this Decision but ask that the rule or practice be reconsidered, and slightly amended on a going forward basis.

In general, VECC supports the limitation of ADR attendance funding to one representative. Most of the evidence has been ascertained at this point and a fair amount of the proceeding consists of a discussion of the parties' positions and waiting for responses to offers. However, frequently occasions arise in an ADR where the presence of a technical consultant or expert witness is necessary to assist in the process of explaining a position or advancing a settlement. Legal counsel for an intervenor is generally the participating ADR representative as counsel usually has the instructions from the client and the representation and negotiation of a settlement most often engages legal counsel. No matter how well briefed counsel may be, the nature of most regulatory proceedings is such that more technical input is necessary for some matters under discussion at the ADR. This assistance not only aids the intervenor but also advances the prospects of settlement.

It is not realistic to simply suggest that such assistance be rendered without recompense, or the consultant stands by while there is a game of musical chairs played to complete the ADR discussion. The strict observance of the funding rule as set out in the Decision is likely to have adverse consequences on the progress of an ADR, and, at the very least, prolong the settlement conference while advice is obtained or the consultant is summoned. As the avoidance of a full

hearing is a principal cost benefit of the ADR process, we believe it is best not to subvert the same through the application of an inflexible rule.

VECC would suggest that an additional representative be funded for ADR attendance for up to one third of the attendance time of the main intervenor ADR participant. Cost control can be obtained without forfeiting the opportunity for ADR discussions to have access to needed assistance from technical consultants when required. It is to be noted that the regulated company will frequently attend with a retinue of staff thought necessary to deal with the issues arising at the ADR. We believe that this modest amendment to the rule or practice will be ultimately be more cost effective than strict adherence to the one representative rule.

Thank you.

Yours truly,

Michael Janigan
Counsel for VECC

cc: All parties – via email