Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

Commission de l'énergie de l'Ontario
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273

Ontario

BY EMAIL

February 2, 2009

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto ON M4P 1E4

Dear Ms. Walli:

Re: Motion by GEC to Vary the Board's Cost Claim Decision and Order in the Integrated Power System Plan and Proposed Procurement Processes Proceeding
Board File No.: EB-2008-0409

Pursuant to Procedural Order No. 1, please find enclosed Board Staff's submission.

Yours truly,

Original signed by

David Richmond
Project Advisor, Applications

cc: Miriam Heinz, Ontario Power Authority
Kai Millyard, GEC
All Registered Intervenors in EB-2007-0707 Proceeding

Attachment

Board Staff Submission

Motion from Green Energy Coalition to Vary the Board's Cost Claim Decision and Order

Board File No. EB-2008 0409

Background

Green Energy Coalition-Pembina Institute-Ontario Sustainable Energy Association ("GEC") is a cost award eligible intervenor in the Board's Integrated Power System Plan ("IPSP") proceeding. In accordance with the Board's Procedural Order No. 8, GEC filed a cost claim on September 15, 2008 for its participation in the Phase 2A portion of the proceeding (from the completion of Phase 1 to and including September 2, 2008). GEC participated extensively in this proceeding and utilized a number of consultants (some of whom were from out of country) in its participation.

On December 9, 2008 GEC filed a motion to vary the Board's Phase 2A Cost Claim, Decision and Order of November 28, 2008 to allow for the change in the US/Canadian Currency Exchange Rate that took place between GEC's cost claim submission date and the date the Board's Cost Claim Decision and Order was issued. GEC sought to increase the cost award for two of its US based consultants by a total of $82,849.11. In its motion, GEC stated that the exchange rate changed by more than 15% during the interval in question. GEC further stated that this change was unprecedented and imposed a hardship for US based consultants and if such consultants were exposed to a significant financial risk such as this without mitigation, they may not wish to participate in Board proceedings in future.

Legal Framework & Board Practice Directions

Appendix B of the Board's Practice Directions on Cost Awards requires that intervenor cost claims be made in Canadian dollars.

The Board's relationship is with the intervenor (to whom the Board makes a cost award) and the Board is generally not privy to nor in control of the contractual arrangements, payment obligations or schedules between the consultant and the intervenor.

Submissions

The basic issue in this case is the question of who should bear the risk for currency fluctuations. Traditionally, it has been the intervenors who bear that risk (both positive and negative), and there are no provisions in the Practice Direction for adjusting cost awards based on currency fluctuations. If the Board were to adjust cost awards to account for currency fluctuations, this would amount to shifting that risk to ratepayers, who ultimately pay the cost awards through their rates. If this were adopted as a general policy, the ratepayer would presumably benefit as often as suffer; in the current case such a practice would be to the detriment of ratepayers.

In Board staff's submission, the Board panel should consider who is better able to manage this risk.

At a more practical level, Board staff submits that there may be significant operational challenges to implementing protections against currency fluctuations. GEC has suggested a threshold of +/- 5% variance on exchange rates from the date of the filing of the costs submission to the issuance of the costs order, above or below which the Board would make an adjustment to the costs order to eliminate the variance. Although on its face this seems to be a fairly simple process to operate, a closer examination reveals several potential problems.

Specifically:

- the Board would have to track currency rates for all cost claims using foreign currency from the date of the filing of the cost claim to the date of the order and determine if the 5% threshold had been broken;

- the Board would not know if an intervenor had made any payments to its consultants prior to the issuance of the costs decisions and if such payments had been made, then the exchange rates looked at by the Board would obviously not be the proper rates; and

- the Board would not know what hedging instruments or activities an intervenor or a consultant might already be applying and without this information the Board would be unable to assess the true impact any currency fluctuations would have on the intervenors (or their consultants).

Undoubtedly, by adding significant additional processes, the Board could obtain all of the information described above. However, Board Staff ask that the Board panel consider if this increased use of resources is warranted.

In addition, GEC referred to significant interest rate fluctuations between the period of the cost claim and the Board's Cost Claim Decision and the impact this may have on participation by US based consultants in the future. Board staff acknowledges that the interest rate fluctuations during this past year have been unusual and significant. It is also true that had the Board's Cost Claim Decision been issued sooner, the impact of the exchange rate would have been reduced. Board staff asks the panel to consider whether this situation warrants a departure from the Board's past practice of having any mitigation efforts a matter of contractual arrangement between the intervenor and its consultants only.