

03 February 2009

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: EB-2008-0409 – IPSP Phase 2a Cost Award - GEC *et al* Motion to Vary

Attached please find the GEC *et al* reply to the submissions from Board Staff in regard to the above-noted motion.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Poch', with a stylized flourish at the end.

David Poch

Cc: all parties

IN THE MATTER OF sections 25.30 and 25.31 of the
Electricity Act, 1998;

AND IN THE MATTER OF an application by the Ontario
Power Authority for review and approval of the Integrated
Power System Plan and proposed procurement processes.

AND IN THE MATTER OF Rule 42 of the Board's Rules of
Practice and Procedure.

AND IN THE MATTER OF a notice of motion by the Green Energy Coalition
to vary a decision of the Ontario Energy Board

Reply Submissions of GEC *et al*

The Moving Parties, the Green Energy Coalition, Pembina and OSEA, (hereinafter GEC) offer the following submissions in reply to the submissions of Board Staff:

1. **Manageability of Risk:** As Board Staff notes, if the risk of currency fluctuations were to be shifted to ratepayers the risk would presumably be symmetrical. Board Staff then suggests that the Board Panel should consider who is better able to manage this risk. GEC submits that non-profit organizations such as the GEC member groups are not in a position to manage such risk having neither expertise or access to inexpensive hedging facilities, nor is it reasonable to assume that consultants, especially those who are not employed by larger organizations, are in a position to hedge or otherwise manage such risk. The risk would not necessarily be symmetrical for such consultants who may not participate routinely. In contrast, it is more likely to be symmetrical for ratepayers over the course of numerous proceedings. Further, a risk of this scale is easily manageable for the rate base, whereas it is quite significant for intervenors and smaller consulting groups as evidenced by the facts herein.
2. **Operational Challenges:** Board Staff raises several concerns in regard to resources required to implement GEC's suggested +/- 5% threshold mechanism. (It should be noted that GEC's suggestion of a standing mechanism with a threshold was only proposed in response to concerns embodied in Board Staff interrogatories and is not proposed as required relief in the motion.)
 - i. Tracking exchange rates: GEC notes that the rate at the date of filing is already known as it is required to be included on the Board's forms. The only added burden would be for Board Staff to look up the exchange rate on the day of the order, likely a single day for numerous orders affecting the various parties in any

given proceeding. GEC suggests that the administrative process could be further streamlined if it were only applicable to cost awards involving foreign consultants whose awards total more than a threshold amount such as \$20,000.

- ii. **Payment history:** Board Staff is concerned that interim payments may have been made to consultants by intervenors. In GEC's submission this is an irrelevant consideration as it would simply represent a shift of the risk from the consultants to the intervenor and not a reduction in the risk being borne.
 - iii. **Hedging:** Board Staff is concerned that the mechanism could be unfair if the consultant or intervenor has embarked upon hedging. This could be addressed by a process that is only applicable where no hedging is being undertaken. A simple addition to the Board's forms asking for an indication if any hedging is being undertaken would be all that is required. In the particulars of this motion, GEC can advise that no hedging has occurred, as is noted in response to the Board Staff interrogatories.
3. **Unusual Circumstance:** Board Staff notes that the significant rate fluctuation experienced in this case is unusual and the extent of impact is in part a function of the time elapsed between costs being sought and awarded. Board Staff asks whether this situation warrants a change of the rules. GEC acknowledges that the situation is likely unusual and suggests that if the Board is reluctant to institute a standing procedure, that relief nevertheless be granted in this motion given the particular facts at hand, an \$83,000 impact. In this manner the Board could expect that such relief will only be sought in future where it is significant enough to warrant the time and expense of a motion.
4. **Costs:** Pursuant to Procedural Order No. 1 in this matter, GEC hereby requests its costs of this motion.

All of which is respectfully submitted this 3rd day of February, 2009.

David Poch
Counsel for GEC *et al.*