



EB-2008-0409

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

AND IN THE MATTER OF an Order by the Ontario Energy Board dated November 28, 2008 which approved cost awards for eligible intervenors in 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 Rules 42 and 44 of the Board's Rules of Practice and Procedure.

BEFORE:

Pamela Nowina
Presiding Member and Vice Chair

Ken Quesnelle
Member

David Balsillie
Member

DECISION ON MOTION

Background and Grounds for the Motion

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 activities to and including September 2,

2008). GEC participated extensively in this proceeding and utilized various foreign consultants as part of its intervention.

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 United States ("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. There is a provision in the cost claim forms to convert US dollars to Canadian for purposes of finalizing the amounts to be paid, but there is no reference to changes in exchange rates that may occur over time.

Board Staff Submission

Board Staff indicated that historically it has been the intervenors, or those consultants who have provided services to intervenors, who have borne the currency exchange risk (both positive and negative) for Board proceedings. There are currently no provisions in the Board's Practice Directions on Cost Awards for adjusting cost awards based on currency fluctuations. Board staff stated that 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. Board staff suggested that the Board in its review of this motion, consider who is better able to manage this risk.

Board staff raised some practical considerations regarding operational challenges to implementing protections against currency fluctuations. GEC 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. Board staff pointed to various implementation challenges to this approach, specifically:

- the Board would have to track currency exchange rates for all foreign currency cost claims 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 rate mitigation contemplated by the Board would have to be adjusted to reflect these payments;
- 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); and
- there would be a requirement to increase the Board resources to implement this procedure.

GEC referred to significant interest rate fluctuations between the period of the cost claim and the Board's Cost Claim Decision and the negative impact this may have on participation by US based consultants in the future. In its submission Board staff acknowledged that the interest rate fluctuations during this past year have been unusual and significant. Had the Board's Cost Claim Decision been issued sooner, the impact of the exchange rate would have been reduced. Board staff questioned 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.

GEC's Response to Board Staff Submission

GEC's position was that non-profit organizations such as the GEC member groups and small consultants are not in a position to manage currency exchange risk. GEC submitted that the exchange risk would not necessarily be symmetrical for such consultants or member groups who may not participate routinely while the risk is more likely to be symmetrical for ratepayers over the course of numerous proceedings. GEC

also indicated that a projected risk of this scale could be easily managed by regulated energy companies.

With respect to some of the practical matters raised by Board staff, GEC submitted that this would be a manageable task by Board personnel as the rate at the date of filing is already known as it is included on the Board's forms as a requirement. The only added burden according to GEC would be for Board staff to determine the exchange rate on the day of the order, likely a single day for numerous orders affecting the various parties. GEC suggested that the administrative process could be further streamlined if mitigation were only applicable to cost awards involving foreign consultants whose awards totaled more than a threshold amount such as \$20,000. In GEC's submission, the fact that payments may have been made to consultants by intervenors 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.

To deal with the concern that intervenors may have employed some hedging, GEC suggests this could be addressed by a process that is only applicable where no hedging is being undertaken. GEC suggests that a simple addition to the Board's forms asking for an indication if any hedging is being undertaken would be all that is required.

GEC acknowledged that the situation in question is unusual and could be addressed on its own merits. GEC submitted that the amount in question is significant and that relief be granted in this motion given the particular facts at hand. In this manner GEC states that 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.

Board Findings

In reviewing the cost claim dockets submitted to the Board, the two consulting organizations in question, Resource Insight Inc. ("RII") and Vermont Energy investment Corporation ("VEIC") submitted invoices to GEC in US dollars between January and August, 2008. Although GEC exercised control over this process, its procurement practices seem quite flexible, since RII and VEIC submitted invoices to GEC in US dollars and all other GEC foreign consultants (Gordon Thompson, Jim Harding, Tom Casteen and Dr. Hermann Scheer) submitted their invoices to GEC in Canadian dollars.

The variation in US/Canadian currency exchange rates that occurred between September 15 and November 28, 2008 does not appear to have resulted in any financial losses for GEC as GEC had no funds associated with the proceeding that decreased in value as a result of exposure to this exchange rate fluctuation. This fluctuation has resulted in a reduction to the remuneration of some of GEC's consultants in equivalent US dollars. In its Motion record, GEC expressed concern that, if unmitigated, this reduction creates a risk in GEC's and others' ability to retain such experts in the future.

The Board does not believe that the risk is significant. GEC's contract was with RII and VEIC and if GEC or any of its consultants felt there were financial risks associated with the overall economic environment, they had the capability to deal with those risks. This could have been accomplished by adjustments to the hourly rate or through some form of hedging mechanism to protect against such changes. GEC can certainly use such mechanisms in the future.

It is not appropriate for the Board to take on responsibility for insuring against currency fluctuation risks. The control of such risk is the responsibility of the parties to the contractual arrangement. In the current case, it appears as though GEC's consultants have been paid in accordance with their contracts, and that GEC is under no obligation to provide them with more remuneration. Although the consultants may have been to some extent victims of circumstance and did not receive as much money (in USD) as they had expected, the Board is not prepared to increase GEC's cost award to correct for this.

The Motion is denied.

ISSUED at Toronto, March 17, 2009

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary