



EB-2009-0130

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF a motion by VECC
requesting the Board to review and vary certain
aspects of Decision and Order EB-2008-0233 dated
April 6, 2009 and Decision and Order EB-2008-0226
dated April 17, 2009.

AND IN THE MATTER OF Rules 42, 44.01 and 45.01
of the Board's *Rules of Practice and Procedure*.

DECISION AND PROCEDURAL ORDER NO. 2

Innisfil Hydro Distribution Systems Limited ("Innisfil Hydro") filed an application with the Ontario Energy Board under section 78 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15, Schedule B as amended, for an order approving or fixing just and reasonable rates for the distribution of electricity, to be effective as of May 1, 2009. The Board assigned file number EB-2008-0233 to the application. The Board issued its Decision and Order related to this application on April 6, 2009.

On April 24, 2009, VECC filed a Notice of Motion to Review and Vary this Decision and Order.

COLLUS Power Corporation ("COLLUS") filed an application with the Ontario Energy Board under section 78 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15, Schedule B as amended, for an order approving or fixing just and reasonable rates for the distribution of electricity, to be effective as of May 1, 2009. The Board assigned file number EB-2008-0226 to the application. The Board issued its Decision and Order related to this application on April 17, 2009.

On April 28, 2009, VECC filed a Notice of Motion to Review and Vary this Decision and Order.

VECC requested that the two motions be heard together due to the similarity of the issues raised by these two appeals.

On May 21, 2009, the Board issued an acknowledgement letter stating that it would hold an oral hearing to consider the threshold question as to whether each of these matters should be reviewed and that a Notice and Procedural Order would be issued in due course.

On June 3, 2009, the Board issued Notice of Hearing and Procedural Order No. 1 stating that it had determined that it would proceed under Rule 45.01 of the Board's *Rules of Practice and Procedure* to hear, in a joint proceeding for both Notices of Motion, the threshold question of whether each of these matters should be reviewed. The Board further stated that should it determine that the threshold had been met, the Board would also consider the merits of the motion itself.

On June 10, 2009, Counsel for Innisfil Hydro and COLLUS ("Innisfil/COLLUS Counsel") filed a letter with the Board requesting (i) that the Board change the hearing date to a date no earlier than the third week of July, as a key member of COLLUS staff would be unavailable on the scheduled date of June 26th and Innisfil/ COLLUS Counsel would be out of the country from June 25th through July 10th; (ii) that the Board alter the procedure that had been set by the first procedural order to separate the hearing of the threshold issue from any subsequent hearing on the merits of the motion; and (iii) that the Board alter the procedure established in the first procedural order to permit Innisfil Hydro and COLLUS to lead evidence in response to the motions.

On June 12, 2009, VECC responded to this letter. VECC stated that while it had no objection to the requests for procedural accommodations *per se*, it believed that the scope of the motions as filed are such that they could be dealt with in a timeframe similar to what was contemplated by the procedural order. As such VECC expressed concern with the scope of the evidence that it appeared to VECC Innisfil Hydro and COLLUS intended to file. VECC stated its belief that it had already filed as part of the motion material all of the application material,

interrogatory responses, and submissions that were before the Board in each of the applications. Accordingly, VECC submitted that with respect to the evidentiary record on the motions, there was no other relevant evidence that could be adduced as the review panel had before it precisely the same evidence that was available to the original panel. VECC also noted that with respect to the timing of the oral component of the motion process, its counsel would be unavailable in the month of August.

On June 16, 2009, Innisfil/COLLUS Counsel responded to VECC's letter, stating that Innisfil Hydro and COLLUS understood from VECC's response that VECC did not object to the procedural requests made by Innisfil Hydro and COLLUS in the June 10th letter. This included the opportunity for Innisfil Hydro and COLLUS to file responding materials, and the scheduling of the hearing or hearings for a date when the Chief Financial Officer of COLLUS and Innisfil/COLLUS Counsel are available. The letter also noted that it appeared that VECC wished any re-scheduling to accommodate its counsel's current unavailability in August and to adhere to a "similar" timeframe to that set out in the first procedural order.

Innisfil/COLLUS Counsel also reiterated the positions set out in the June 10th letter that the threshold question should be determined separately from any subsequent hearing on the merits of the motion as this would be the most effective use of the Board's and the parties' resources. The letter expressed agreement with VECC that it was reasonable that any rescheduling take VECC counsel's availability into account. In response to VECC's concern regarding the scope of the responding materials sought to be filed, the letter stated that the right to file materials in response to VECC's motions was a matter of procedural fairness. Since VECC had filed materials in support of its motion, Innisfil Hydro and COLLUS must be given a reasonable opportunity to do the same.

Decision on Procedural Issues

There are three procedural issues that the Board must make a determination on related to these motions. The first is whether or not the hearing date should be moved. The second is whether or not the threshold question should be determined separately from any subsequent hearing on the merits of the motions. The third is whether Innisfil Hydro and COLLUS should be permitted to file additional materials related to the motions.

In making its determinations, the Board is concerned with maximizing process efficiency given that the issues raised impact the rates paid by the customers of Innisfil Hydro and COLLUS. At the same time, the Board must ensure that a full and fair review takes place.

The Board finds that the efficiency of this process will be maximized by considering the threshold question and the merits of the motions at the same time. The Board has made use of similar processes when dealing with motions related to other proceedings and has found such processes to be effective. Accordingly, the Board will not separate consideration of the threshold question from the merits of the motion.

The Board will permit Innisfil Hydro and COLLUS to file additional materials related to the motions. In so doing, the Board notes the concerns of VECC that such materials may be extraneous to the issues raised by the motions. If VECC, or other parties have concerns about the relevance of any such evidence that may be filed, the Board will hear these concerns at the commencement of the oral hearing.

The Board will allow for a delay in the scheduling of the oral hearing. In granting this delay, the Board is mindful of the scheduling difficulties faced by parties and in particular the difficulties which arise in establishing an oral hearing date in the summer period. However, the Board must also be concerned with the need to deal expeditiously with the matters raised by these motions. Accordingly, the Board will grant a postponement of the oral hearing for ten days from June 26th to July 6th. The oral hearing will deal with all issues raised by these motions.

THE BOARD THEREFORE ORDERS THAT:

1. Innisfil Hydro and COLLUS may file additional evidence relevant to the motions by June 29, 2009.
2. The oral hearing of the motions will commence at 9:30 am on July 6, 2009 in the Board's North hearing room at 2300 Yonge Street, Toronto.
3. Any filings to the Board must quote file number EB-2009-0109, be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of

two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

4. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ISSUED at Toronto, June 19, 2009

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary