



**EB-2009-0265**

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

**AND IN THE MATTER OF** an application by Haldimand  
County Hydro Inc. for an order approving just and  
reasonable rates and other charges for electricity  
distribution to be effective May 1, 2010.

**BEFORE:** Cathy Spoel  
Presiding Member

### **DECISION AND ORDER ON COST AWARDS**

Haldimand County Hydro Inc. ("Haldimand") filed an application with the Ontario Energy Board (the "Board"), on August 28, 2009, under section 78 of the Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B), seeking approval for changes to the rates that Haldimand charges for electricity distribution, to be effective May 1, 2010. The Board has assigned File Number EB-2009-0265 to this application.

On October 14, 2009, the Board issued Procedural Order No. 1 granting Energy Probe Research Foundation ("Energy Probe"), School Energy Coalition ("SEC") and Vulnerable Energy Consumers Coalition ("VECC") intervenor status. The Board determined that the intervenors are each eligible to apply for an award of costs under the Board's *Practice Direction on Cost Awards*.

The Board issued its Decision and Order on the application on March 31, 2010, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by Haldimand.

Cost claims were submitted by Energy Probe, SEC and VECC by the April 25, 2010 deadline specified in the Decision and Order.

By letter dated April 29, 2010, Haldimand raised concerns with the cost claims of Energy Probe. Haldimand noted that while the other intervenors had only one consultant participating in the Settlement Conference, Energy Probe's cost includes two consultants, represented by David MacIntosh and Randy Aiken. Haldimand submitted that the costs were excessive and objected to Energy Probe's cost claim. Haldimand requested that David MacIntosh's claim including fees of \$2,415.00 plus GST of \$60.38 and disbursements of \$39.00 (GST included) for a total of \$2,514.38 be disallowed.

On May 10, 2010, Energy Probe replied to Haldimand's letter disputing Haldimand's submission that other intervenors had only one consultant at the Settlement Conference. Energy Probe argued that on the first day of the Settlement Conference, Michael Buonaguro and William Harper both participated on behalf of VECC with Mr. Harper participating by teleconference.

Energy Probe further submitted that Haldimand had not provided the Board with a reasonable standard for measurement of "excessive" costs in this context. Energy Probe noted that the observations made by the Applicant were not linked to the Board's *Practice Direction on Cost Awards*, Section 5 – Principles in Awarding Costs.

Energy Probe submitted that the Settlement Agreement has resulted in a substantial reduction to the revenue deficiency, reducing it from \$1,584,943 to \$961,358. Energy Probe added that the request of Haldimand for a reduction in Energy Probe's costs of \$2,514.38 will, if granted by the Board, have an annual impact of approximately \$630.00 on a revenue requirement of \$13,735,891.00 (2010).

Energy Probe accordingly submitted that it be awarded full recovery of its costs incurred in this proceeding.

## **Board Findings**

The Board has reviewed the claims filed by Energy Probe, SEC and VECC to ensure they were compliant with the Board's *Practice Direction on Cost Awards*. The review of the claims indicated that one cost claimed by SEC is not in accordance with the Board's

*Practice Direction on Cost Awards*, and has made the following adjustment to the cost claim: \$48.60 reduction in disbursements.

The Board has reviewed the submissions of Energy Probe and Haldimand and agrees with Haldimand's submission that the costs of two consultants attending a Settlement Conference may be considered 'excessive'. The Board notes that its *Practice Direction on Cost Awards*, particularly the Principles set out at Section 5.01 (a)-(d), require the Board to consider generally whether there has been a duplication of effort by the parties. There is no indication in Energy Probe's costs claim that each of the consultants' brought a discrete or specialized knowledge to the Settlement Conference such that both consultants were necessary. The Board believes that having two consultants attend a Settlement Conference when it does not appear necessary gives the impression that there is a duplication of effort. The Board believes that intervenors should be especially conscious of the manner in which they allocate their resources for activities such as attending Settlement Conferences for medium to small sized utilities in particular. The Board will reduce the costs claimed by Energy Probe by an amount equal to 5% of the total cost claim filed. This finding is not intended to suggest that there was any improper or unhelpful conduct on behalf of the intervenor, nor is it intended to constrict the manner in which intervenors conduct their interventions, rather to recognize that the costs for the non-hearing component of this proceeding, given the size of the utility, do appear to result from a duplication of effort and therefore are slightly excessive. The Board therefore awards Energy Probe a total amount of \$19,319.76.

The Board accepts the cost claims filed by VECC notwithstanding that it was filed after the deadline specified in the Decision and Order. The Board finds that all parties are eligible for 100% of their reasonably incurred costs of participating in this proceeding subject to the adjustment referenced above. The Board finds that each party's claims, adjusted as described above, are reasonable and should be reimbursed by Haldimand.

**THE BOARD THEREFORE ORDERS THAT:**

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Haldimand shall immediately pay:
  - Energy Probe Research Foundation \$19,319.76;
  - School Energy Coalition \$10,014.03; and

- Vulnerable Energy Consumers Coalition                      \$17,938.52.
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Haldimand shall pay the Board's costs of and incidental to this proceeding immediately upon receipt of the Board's invoice.

**DATED** at Toronto, June 17, 2010

**ONTARIO ENERGY BOARD**

Original Signed By

Kirsten Walli  
Board Secretary