

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

AND IN THE MATTER OF an Application by Norfolk Power Distribution Inc. for an Order or Orders approving just and reasonable rates and other service charges for the distribution of electricity, effective on May 1, 2011.

NOTICE OF INTERVENTION
OF THE
HVAC COALITION

1. The HVAC Coalition hereby applies for intervenor status in this proceeding, and requests that the Board allow recovery of its reasonably incurred costs of its participation.

General Interest of the Intervenor

2. The HVAC Coalition is a coalition established to represent the interests of Ontario heating and air conditioning contractors, suppliers, and manufacturers in matters relating to energy regulation, policy, and management. It counts amongst its members a majority of the heating and air conditioning contractors operating within the Applicant's franchise area.
3. The intervenor's members have a significant interest in the activities of regulated electricity distributors and their affiliates in the province, because any action by an electricity distributor to use its monopoly power to affect the competitive markets can dramatically affect not only the economic viability of the members' businesses, but the nature and price of the services available to the members' customers. Past actions of gas and electric utilities and their affiliates have created significant barriers to the competitive flow of goods and services within the HVAC equipment and servicing sectors, in some cases causing bankruptcies or other serious impacts on local small and medium sized enterprises around the province. Where in the past the gas utilities utilized their regulated activities to subsidize competitive activities, to the detriment of the ratepayers, we are now seeing an increasing tendency by electricity distributors to seek higher profits through unregulated activities whose lower costs appear to be the result of ratepayer subsidies.

Issues to be Addressed

4. HVAC's intended participation will focus on the following issues:
 - (a) The proposed costs for the test year, the resulting revenue requirement, the forecast of revenues, and the resulting deficiency, all as they are impacted by the utility's relationship with unregulated affiliates;
 - (b) The use of utility assets, branding, reputation, and other advantages, without compensation, to compete with private sector companies in the Applicant's franchise area; and
 - (c) Generally to represent the interests of local heating and air conditioning contractors in this process.

The Intervenor's Intended Participation

5. The HVAC Coalition intends to participate in any pre-hearing procedures, including interrogatories or technical conferences, and settlement conferences. HVAC also intends to participate in any oral hearing of this matter, and in written or oral submissions, as well as any other parts of the process that the Board should order.
6. The HVAC Coalition currently expects that it will file evidence relating to the subsidized anti-competitive actions of the Applicant and its affiliates in the franchise area.

Nature of Hearing Requested

7. Until interrogatories have been answered, we believe it is premature to assess whether a written or an oral hearing is more appropriate in this proceeding.

Counsel/Representative

8. The HVAC Coalition requests that a copy of all documents filed with the Board by each party to this proceeding be served on the Applicant, and on the Applicant's counsel, as follows:

- (a) HVAC Coalition:

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(b) HVAC Coalition's counsel:

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Costs

9. In recent years, the HVAC Coalition has only rarely sought or been awarded costs relating to its participation in proceedings before the Board. Those situations in which costs have been allowed have been ones in which the primary focus has been on the impact on ratepayers, and HVAC can provide a perspective to the Board that would otherwise not be available. HVAC generally does not intervene where those conditions are not met.
10. This Applicant, unlike many other electricity distributors, has an extensive and expanding business through an affiliate competing with the members of the HVAC Coalition. Only recently has it taken the first steps to distance itself from the utility, and the local community still sees the utility and the affiliate as one and the same. The resources of the utility appear to be regularly used as the foundation of the affiliate's business.
11. In this proceeding, and notwithstanding the current wording of the Board's Practice Direction on Cost Awards, HVAC Coalition therefore asks the Board to exercise its discretion to order that HVAC Coalition be awarded recovery of its reasonably incurred costs of participation. Misuse of monopoly powers by a rate regulated entity is contrary to good public policy, and unfair to ratepayers who end up paying for unregulated activities through subsidies. While HVAC Coalition's members' commercial interests are undoubtedly affected by the issues in this rate proceeding, the impact on the members' commercial interests is secondary to the impact on ratepayers of these activities.

Respectfully submitted on behalf of the HVAC Coalition this 15th day of November, 2010.

Jay Shepherd

Counsel for the HVAC Coalition