

From: [BoardSec](#)
To: [REDACTED]
Subject: FW: File EB-2010-0295
Date: November 16, 2010 2:18:34 PM

From: Robert Lubinski [REDACTED]
Sent: November 16, 2010 2:10 PM
To: BoardSec
Subject: Fwd: File EB-2010-0295

Please confirm receipt of my earlier e-mail (below) and advise when it will be published on the Board's website, together with other documents and correspondence pertaining to this application.

R. Lubinski

----- Original Message -----

Subject: File EB-2010-0295

Date: Thu, 11 Nov 2010 15:42:18 -0500

From: Robert Lubinski [REDACTED]

To: boardsec@oeb.gov.on.ca

CC: jdickson.mpp.co@liberal.ola.org, tabuns-qp@ndp.on.ca, john.yakabuski@pc.ola.org,
roseman@torontostar.ca

Board Secretary
Ontario Energy Board
1200 Yonge St., Ste. 2701
Toronto, ON M4P 1E4

I wish to voice my strong objection to any possibility that the OEB may rule in favour of the applicant to allow passing on to ratepayers the multi-million dollar judgment against it.

In the course of pursuing this matter, to my dismay, I found out that in 2008 the OEB ruled in favour of Enbridge (file EB-2007-0731) and allowed for an over 20 million-dollar judgment against the company to be recovered from its ratepayers. At that time, Enbridge argued that it followed OEB's orders when it levied usurious interest rates on late-payment penalty charges, in contravention of the Criminal Code. None of the documents posted on the Board's website enable me to determine what arguments the applicant intend to put forward in support of this application. I hope that history will not repeat itself and that the current applicant will not be able to argue, like Enbridge did, that it merely followed the OEB's orders and late-payment penalty rate structure.

It also angers me to think that after paying millions of dollars to charities supporting energy assistance programs to low-income ratepayers, as ordered by the Ontario Superior Court of Justice, the applicant in this case will, in all likelihood, be able to claim the judgment as a charitable donation in order to reduce its corporate taxes.

By forwarding copies of this e-mail, I am alerting Hon. Joe Dickson (my local MPP), Hon. John Yakabuski and Hon. Peter Tabuns (energy critics in the Ontario Legislature) as well as Ms. Ellen Roseman from The Toronto Star to this outrageous application before the OEB. It MUST be stopped dead in its tracks to spare the already overburdened Ontario electricity ratepayer from picking up the tab for the corporation's wrongdoing.

Sincerely,

Robert Lubinski



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BUSINESS

Should electricity customers pay lawsuit costs?

The Ontario Energy Board will decide whether customers should cover \$17 million in costs incurred by electrical utilities in settling a class action lawsuit.

The case was about excessive late payment penalties charged by Toronto Hydro and other electricity distributors after April 1981.

Many people say they don't want to absorb any more costs at a time when electricity bills are going up quickly.

Brian Lafleche read about the upcoming hearing in the *North Bay Nugget*. He wrote to the board.

"The case was against the distributors. Why should the ratepayers have to pay for their distributors' incompetence?" he asked.

Robert Lubinski, who saw an ad in the *Toronto Star*, was outraged to see that distributors could commit wrongdoing, have a monetary judgment against them and ask to



ELLEN ROSEMAN

pass the costs on to consumers.

"This application must be stopped dead in its tracks to spare the already overburdened Ontario electricity ratepayer from picking up the tab," he said.

John Todd, an energy consultant at Elenchus Research Associates, sees the late payment fees in a different light.

The money collected was used to offset distributors' costs, including the cost of financing the late payments, he says.

"If the late payment fees had not

been collected in the past, rates would have been much higher. Hence, arguably, it is customers that benefited from the fees, so it is customers that should pay now."

The distributors may see a precedent in an Ontario Energy Board decision in 2008, which also involved late payment penalties.

In a \$22 million settlement of a class action lawsuit that went all the way to the Supreme Court of Canada, Enbridge Gas was allowed to recoup the costs from its residential customers.

The class action proceeds went into a charity to help low-income consumers (the Winter Warmth Fund) and to the lawyers who acted for the plaintiff, Gordon Garland.

"The underlying issue is that it's almost impossible to give refunds to the people that actually paid the penalties," says Michael Buonagu-

ro, a lawyer for the Public Interest Advocacy Centre.

In his view, the Enbridge case is similar to the electricity distributors' case. He will act on behalf of the Vulnerable Energy Consumers Coalition at the upcoming hearing and argue against ratepayers picking up the costs.

Meanwhile, the Ontario Energy Board continues to hear from customers, whose responses are posted at its website.

"Ontarians who have limited incomes and are just coming out of a recession cannot afford any more hikes, charges or miscellaneous fees and 'recoveries' on their hydro bills," says Shawn Lowes.

This is an insult to consumers, says Keith Moyer.

"The class action was applied for in good faith and a ruling in favour of the consumer was put forth by Mr. Justice Cumming on April 10,

2010.

"What the distributors are now saying is, 'Sure, we were found guilty, but we want our money back from all those who were awarded the judgment, as well as every other customer we have.'"

Says John-Paul Delseny: "I do not believe it is right to unfairly charge customers late penalty fees, and when caught and penalized for doing so, pass that penalty back onto the same customers that might have been unfairly charged in the first place."

Class actions were seen as a way to help ordinary consumers fight against economic injustices.

The Enbridge decision, if followed in the upcoming electricity hearing, makes a mockery of this objective.

Ellen Roseman writes about personal finance and consumer issues. You can reach her at eroseman@thestar.ca.