



**EB-2010-0139**

**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 Norfolk Power Distribution Inc. for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2011.

### **DECISION & PROCEDURAL ORDER No. 1**

Norfolk Power Distribution Inc. ("Norfolk" or "the Applicant") filed an application with the Ontario Energy Board (the "Board"), received on October 29, 2010 under section 78 of the *Ontario Energy Board Act, 1998*, (the "Act") seeking approval for changes to the rates that Norfolk charges for electricity distribution, to be effective May 1, 2011. The Board has assigned the application File Number EB-2010-0139.

The Board issued a Notice of Application and Hearing dated November 10, 2010. Energy Probe Research Foundation ("Energy Probe"), Vulnerable Energy Consumers Coalition ("VECC"), School Energy Coalition ("SEC") and HVAC Coalition ("HVAC") applied for intervenor status and cost eligibility. No requests for observer status were received by the Board.

#### *(i) Intervenor Status and Cost Eligibility Issues*

On December 6, 2010, the Board received a letter from Norfolk requesting that the Board reject HVAC's request for intervenor status and its request for cost award eligibility. Norfolk objected to HVAC's intervention on two grounds, which were: (1) that HVAC's intervention was based on alleged compliance issues and, as such, its concerns were out of scope for this proceeding, and (2) the potential for duplication of intervenor costs as counsel to HVAC is also counsel to the School Energy Coalition.

Norfolk argued that HVAC should also not be eligible for costs since, as acknowledged by HVAC's counsel, the Board's *Practice Direction on Cost Awards* does not contemplate a trade group such as HVAC receiving a cost award. Norfolk further argued that whether or not HVAC has recovered its costs in other proceedings, there is no basis for such an award in the present proceeding.

On December 14, 2010, HVAC responded to Norfolk's letter. HVAC argued that its concerns were within the scope of this proceeding since they were entirely directed at ratepayer impacts. HVAC further stated that there would be no duplication of costs, because of the dual representation by HVAC's counsel of two intervenors, but that this would in fact generate savings. HVAC argued that where the issue of it being a trade group was concerned, the Board had the discretion to find any party eligible for costs where such participation would be in the public interest and costs eligibility would allow such parties to add additional value to the process. HVAC noted that in the past the Board had found it eligible for cost awards in some proceedings on that basis, along with other groups which would be otherwise disqualified. HVAC argued that it was in a good position to assist the Board in understanding the relationship of competitive affiliates to the regulated utility and the ways in which costs borne by ratepayers could be impacted by such relationships.

The Board has determined that Energy Probe, VECC, SEC and HVAC will be granted intervenor status. Where HVAC is concerned, the Board is in agreement with its submission that the issue which it has raised has rate-making implications and, accordingly, HVAC's participation would be of value to the Board. The list of intervenors in this proceeding is attached as Appendix A to this Order.

The Board has also determined that intervenors are each eligible to apply for an award of costs under the Board's *Practice and Direction on Cost Awards*. However, where HVAC is concerned, while its intervention is allowed by the Board on the full range of issues raised by Norfolk's application, its cost awards eligibility will be restricted to its involvement with the issue of the impact of the utility's relationship with its unregulated affiliates on ratepayers. While the Board is mindful of Norfolk's concerns about the potential duplication of costs, the Board is of the view that HVAC has the ability to assist the Board in better understanding the issue of Norfolk's relationship with its unregulated affiliates on ratepayers.

*(ii) Early Rebasing Issue*

In a letter sent to distributors on April 20, 2010 (the “Letter”), the Board stated:

A distributor, including the four distributors referred to above, that seeks to have its rates rebased in advance of its next regularly scheduled cost of service proceeding must justify, in its cost of service application, why an early rebasing is required notwithstanding that the “off ramp” conditions have not been met. Specifically, the distributor must clearly demonstrate why and how it cannot adequately manage its resources and financial needs during the remainder of its IRM plan period. Distributors are advised that the panel of the Board hearing the application may consider it appropriate to determine, as a preliminary issue, whether the application for rebasing is justified or whether the application as framed should be dismissed.

Distributors are also advised that the Board may, where an application for early rebasing does not appear to have been justified, disallow some or all of the regulatory costs associated with the preparation and hearing of that application, including the Board’s costs and intervenor costs. In other words, the Board may order that some or all of those costs be borne by the shareholder.

Norfolk rebased its distribution rates in 2008 and would normally come in for rebasing in 2012 under the third Generation Incentive Regulation Mechanism plan. In its application, and specifically at Exhibit 1/Tab2/Schedule 1/pp. 2-4, Norfolk has provided its reasons and support for filing for an early rebasing of rates for 2011.

The Board has determined that it will consider Norfolk’s application for early rebasing for 2011 distribution rates (the “Preliminary Issue”) in advance of further procedural steps. To accomplish this, the Board will allow an initial round of interrogatories by registered intervenors and Board staff to seek, if they wish, additional information specifically related to the Preliminary Issue and Norfolk’s evidence on the Preliminary Issue. Following Norfolk filing its responses to these interrogatories, Board staff and intervenors may file submissions on whether Norfolk’s application is justified based on the Board’s letter of April 20, 2010, with Norfolk being allowed to file a reply submission if it so wishes.

If, following its determination on the Preliminary Issue, the Board decides to proceed with its consideration of Norfolk's application, the Board will shortly thereafter issue a further Procedural Order to allow for submissions on Norfolk's claim for confidentiality with respect to certain information filed in the application and to allow for further discovery on the application.

The Board considers it necessary to make provision for the following matters related to this proceeding.

**THE BOARD ORDERS THAT:**

1. Board staff and intervenors shall file with the Board and deliver to Norfolk Power Distribution Inc. any interrogatories with respect to the Preliminary Issue on or before **December 23, 2010**.
2. Norfolk Power Distribution Inc. shall file with the Board and deliver to all intervenors any responses to interrogatories filed with it with respect to the Preliminary Issue on or before **January 11, 2011**.
3. Board staff and intervenors shall file with the Board and deliver to all intervenors any written submissions pursuant to the Preliminary Issue and Norfolk Power Distribution Inc.'s submission on or before **January 21, 2011**.
4. Norfolk Power Distribution Inc. shall file any written reply submissions on the Preliminary Issue with the Board and deliver them to all other intervenors on or before **January 31, 2011**.

All filings to the Board must quote the file number, EB-2010-0139, be made through the Board's web portal at [www.errr.oeb.gov.on.ca](http://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. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.oeb.gov.on.ca/OEB/Industry](http://www.oeb.gov.on.ca/OEB/Industry). If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

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.

**ADDRESS**

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4  
Attention: Board Secretary

E-mail: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)  
Tel: 1-888-632-6273 (toll free)  
Fax: 416-440-7656

**DATED** at Toronto, December 16, 2010

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

**Appendix 'A'**

**To**

**Procedural Order No. 1**

**Norfolk Power Distribution Inc.**

**EB-2010-0139**

**Applicant and List of Intervenors**

**December 16, 2010**

**Norfolk Power Distribution Inc.**

**EB-2010-0139**

**APPLICANT & LIST OF INTERVENORS**

December 16, 2010

**APPLICANT**

**Rep. and Address for Service**

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**INTERVENORS**

**Rep. and Address for Service**

**Norfolk Power Distribution Inc.**

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**APPLICANT & LIST OF INTERVENORS**

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December 16, 2010

**Energy Probe Research  
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**Norfolk Power Distribution Inc.**

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**APPLICANT & LIST OF INTERVENORS**

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**School Energy Coalition**

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**Vulnerable Energy Consumers  
Coalition**

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