



EB-2010-0295

IN THE MATTER OF a proceeding initiated by the Ontario Energy Board to determine whether the costs and damages incurred by electricity distributors as a result of the April 21, 2010 Minutes of Settlement in the late payment penalty class action, as further described herein, are recoverable from electricity distribution ratepayers, and if so, the form and timing of such recovery.

PROCEDURAL ORDER NO. 1

On October 29, 2010 the Ontario Energy Board (the "Board") issued a Notice of Proceeding on its own motion to determine (i) whether Affected Electricity Distributors should be allowed to recover from their ratepayers the costs and damages incurred in the Late Payment Penalty Class Action ("LPP Class action"), and if so, (ii) the form and timing of such recovery. This proceeding was commenced pursuant to sections 19 and 78(2) of the *Ontario Energy Board Act, 1998* and the Board has assigned File no. EB-2010-0295 to this proceeding.

For purposes of this proceeding, "Affected Electricity Distributors" means licensed Ontario electricity distributors that were named as defendant class members in Schedule F of the Minutes of Settlement, dated April 21, 2010.

The Board notes that Hydro One Networks Inc., Hydro One Remote Communities Inc. and Orillia Power Distribution have received Board approval to withdraw from the proceeding. These distributors decided to forego the recovery from ratepayers any costs arising from the settlement of the LPP Class Action, were these costs found to be recoverable from ratepayers.

Canadian Niagara Power Inc. (CNPI), PUC Distribution Inc. (PUCDI), Fort Albany First Nation (FAFN) and Kashechewan Power Corporation (KPC) who were named as defendant class members in the Minutes of the Settlement informed the Board that they were in fact not a party to the settlement and as such do not intend to seek recovery of any costs arising from the settlement of the LPP Class Action. Accordingly, CNPI, PUCDI, FAFN and KPC informed the Board that they did not intend to participate in the proceeding. The Board approves CNPIs, PUCDI, FAFNs and KPCs request to withdraw from the proceeding.

Evidence

Pursuant to the Notice of Proceeding the Board received the collective evidence of Affected Electricity Distributors on November 8, 2010. This evidence was prepared and filed by the Electricity Distributors Association (“EDA”) on behalf of Affected Electricity Distributors. On November 11, 2010 the Board received a letter from Toronto Hydro Electric System Limited (“THESL”), also a named defendant class member, advising the Board that because of circumstances that are unique to THESL, it had decided to file limited supplementary evidence. THESL noted that it continues to rely on the collective evidence of the Affected Electricity Distributors and does not challenge or rebut that evidence. THESL filed its supplementary evidence on November 12, 2010.

On December 8, 2010, Port Colborne Hydro Inc. (PCHI) which is a named defendant class member and is therefore an Affected Electricity Distributor for purposes of this proceeding, informed the Board that due to an administrative error, the amount that it is seeking to recover is not listed in Schedule G of the Minutes of Settlement. PCHI stated that it is seeking to recover from ratepayers approximately \$28,000 arising from the settlement of the LPP Class Action. The Board issued a revised Notice of Proceeding to PCHI.

The Board notes PCHI has not yet published the revised Notice of Proceeding and the dates in this Order may change subsequent to the publication of that Notice.

The EDA updated its November 8, 2010 evidence to correct for the administrative error with respect to PCHI. The updated evidence was filed on December 17, 2010.

Intervenors and Cost Eligibility

The Board received requests for intervenor status from Canadian Manufacturers and Exporters (“CME”), School Energy Coalition (“SEC”), EDA, Vulnerable Energy Consumer’s Coalition (“VECC”), Donald D. Rennick and a request for joint intervention from Joe Stevens and Flora L. Dooley. Each of CME, VECC, SEC and Donald D. Rennick also sought a determination of eligibility to apply for an award of costs. The EDA and Joe Stevens and Flora L. Dooley indicated that they did not intend to seek costs.

None of the Affected Electricity Distributors objected to the requests for intervention. The Board hereby grants intervenor status to all the parties that requested such status. A list of intervenors is attached as Appendix A to this order.

The Board has also determined that CME, VECC, SEC and Donald D. Rennick are eligible to apply for an award of costs under the Board’s *Practice Direction on Cost Awards*.

The *Practice Direction on Cost Awards* and related forms are available on the Board’s website at www.oeb.gov.on.ca. The *Practice Direction on Cost Awards* should be referred to and adhered to in order to make sure all appropriate rules are followed and the correct forms are used when it is time to submit cost claims. Additionally, the Board reminds Donald D. Rennick that as an individual intervenor, the following information should be used as guidance for what costs may or may not be recoverable in a cost award. Mr. Rennick:

- may be eligible to recover out-of-pocket costs for photocopying or for travel to attend Ontario Energy Board related events if required;
- is not eligible to receive any costs (out-of-pocket travel costs or otherwise) for events organized by persons other than the Ontario Energy Board;
- may not be eligible to receive any costs associated with his time (e.g., the time spent preparing interrogatories, submissions, etc.); and
- may not recover any costs in advance.

Issues List

In the Notice of Proceeding the Board invited comments on the list of issues in the proceeding. No party filed comments on the issues list. The final issues list is attached as Appendix B to this order.

The Board considers it necessary to make provision for the following procedural matters. Please be aware that further procedural orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. Parties seeking information and material from the Affected Electricity Distributors on their collective evidence and the supplemental evidence of THESL shall request it, by written interrogatories filed with the Board on or before **December 29, 2010**.
2. The EDA on behalf of the Affected Electricity Distributors shall file with the Board complete responses to all interrogatories on the collective evidence by **January 10, 2011**. THESL shall file with the Board complete responses to all interrogatories on its supplemental evidence also by **January 10, 2011**.
3. The EDA on behalf of the Affected Electricity Distributors shall file with the Board its argument-in-chief by **January 17, 2011**. THESL shall file with the Board its argument-in-chief in relation to its supplemental evidence also by **January 17, 2011**.
4. Board Staff and Intervenors shall file their submissions with the Board on the collective evidence of the Affected Electricity Distributors and the supplemental evidence of THESL by **January 31, 2011**.
5. The EDA on behalf of the Affected Electricity Distributors and THESL shall file their reply to the submissions of Board staff and Intervenors by **February 7, 2011**.

The Board reminds all parties that due to the number of Affected Electricity Distributors involved in this proceeding, the Board will not require parties to file materials with all other parties. As such, all parties will be required to regularly consult the Board's website at <http://www.oeb.gov.on.ca/html/EB-2010-0295> to gain access to any newly filed materials in this case.

All filings to the Board must quote the file number, EB-2010-0295, 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.

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
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

DATED at Toronto, December 17, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX “A”

**Late Payment Penalty Generic Proceeding
EB-2010-0295**

LIST OF INTERVENORS

**Ontario Energy Board
EB-2010-0295**

APPLICANT & LIST OF INTERVENORS

December 17, 2010

APPLICANT

Rep. and Address for Service

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- Ontario Energy Board

Ontario Energy Board
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27th Floor
Toronto, on M4P 1E4

Tel: 416-481-1967

Fax: 416-440-7656

boardsec@oeb.gov.on.ca

INTERVENORS

Rep. and Address for Service

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Independent Participants - General Public

392 Surrey Drive

North Bay ON P1C 1E3

Tel: 705-476-2007

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Joe Stevens

Independent Participants - General Public

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Tel: 000-000-0000

Fax: Not Provided

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APPLICANT & LIST OF INTERVENORS

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December 17, 2010

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APPLICANT & LIST OF INTERVENORS

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School Energy Coalition

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**Ontario Energy Board
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APPLICANT & LIST OF INTERVENORS

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**Vulnerable Energy
Consumers Coalition**

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APPENDIX “B”

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BOARD APPROVED ISSUES LIST

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1. As a threshold question, whether Affected Electricity Distributors should be allowed to recover from ratepayers the costs and damages incurred in the LPP Class Action; and
2. If the answer to the first issue is yes, what would be an appropriate methodology to:
 - a) apportion costs across customer rate classes, and
 - b) recover such allocated costs in rates.