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BY EMAIL and RESS

February 24, 2011

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: EB-2009-0274 – Whitby Hydro Electric Corporation ("Whitby Hydro")

I am writing in response to the comments filed by the intervenors in regard to my letter dated February 22, 2011. This reply is divided into two parts: (i) general comments; and (ii) comments in regard to the specific questions posed in my February 22, 2011 letter.

1. General Comments:

The information that I requested on behalf of Whitby Hydro was a genuine attempt to ascertain the reasonableness of the intervenors' costs in order to determine whether any objections should be filed. In the absence of such information, applicants are extremely limited in the scope of the objections they can file. It is in the interest of ratepayers, in this case Whitby Hydro's ratepayers, that a fulsome assessment of intervenor costs be conducted. Since the Applicant's ratepayers pay the intervenors' costs, the Applicant should participate in the assessment. The information that I am seeking will allow for such an assessment. For example, it is understood that the Board has established tariffs for cost claims. However, it may be the case that intervenors can retain consultants at rates below the tariffs. If the Board believes that utilities have an obligation to minimize costs borne by ratepayers, why would the same logic not apply to intervenor costs borne by ratepayers? Just as intervenors ask questions about the efforts a utility has made to minimize costs, I have done the same.

In regard to the forum for these questions, I believe that in the cost claim segment of a rates proceeding is the appropriate forum, since the intervenor costs are recovered through an applicant's rates. The Board may wish to conduct a generic proceeding on intervenor costs in the future but, until such time, that should not preclude an analysis of the reasonableness of specific intervenor costs during cost of service proceedings.

In regard to the timing of the questions, I don't know when an applicant would have an opportunity to assess intervenor costs outside the cost claim segment of a cost of service proceeding. I do accept that questions pertaining to an intervenor's eligibility to participate should be raised in response to a request for intervenor status and, to that end, I have withdrawn some questions as set out below. To my

knowledge, questions such as mine have never been asked of intervenors before, so there was no history to guide the scope of the questions.

I recognize that my request was made late in the process, however it took time to review the cost claims and develop questions. I also understand that this proceeding has lasted longer than most, however a short delay in the cost claim segment of the proceeding is not a sufficient reason to prevent us from conducting a reasonable assessment of the intervenors' costs.

2. Comments Regarding the Specific Questions:

1. Please show the total claim and the hours of effort by the following categories:

- a) Cost Allocation/Rate Design*
- b) Revenue Requirement (Non-Cost Allocation/Rate Design)*

Comments: I understand that the intervenors may not track their time on this basis. Therefore, I request a best estimate only. Both questions #1 and #2 are related to question #9. Please refer to the comments to question #9 below.

2. Within each category above, please show the claimed costs and the hours of effort by the following sub-categories:

- a) Preparation*
- b) Interrogatories*
- c) Technical Conference*
- d) Settlement Conference*
- e) Settlement Agreement*
- f) Rate Order*

Comments: Same comment as in #1.

3. To the extent that interrogatories filed in this case were the same as or similar to interrogatories filed in another proceeding, is this reflected in the cost claim? Please explain how.

Comments: This question is directly related to the reasonableness of the cost claims and should therefore be answered.

4. Please indicate the names of the people representing the intervenor in the Technical Conference and Settlement Conference.

Comments: This question pertains to multiple representatives of the same intervenor attending matters at the Board concurrently. The response to this question would be used to assess whether the cost claims contain unnecessary costs and I therefore wanted to establish the identities of the intervenor representatives who attended the Board concurrently in order to complete the record.

5. How has the intervenor attempted to co-ordinate its intervention with other intervenors? Please provide all correspondence, documentation, emails between the intervenor and other intervenors in that regard.

Comments: According to VECC, this question is essentially asking the intervenors to respond to an objection not yet put forward by Whitby Hydro. I disagree. I note that section 5.01 of the *Practice*

Direction on Cost Awards (the "Practice Direction") provides that the Board may consider whether a party "made reasonable efforts to co-operate with other parties in order to reduce the duplication of evidence and questions on cross-examination." In regard to the point raised by VECC and SEC regarding communications pertaining to the ADR process, their points are valid and the question should be restricted to non-ADR communications among the intervenors. This question was posed to determine whether the intervenors are maximizing their coordination in order to minimize costs, not to uncover confidential ADR communications. The question therefore is rephrased as follows: *How has the intervenor attempted to co-ordinate its intervention with other intervenors? Please provide all correspondence, documentation, emails between the intervenor and other intervenors in that regard with the exception of materials that pertain to the ADR process.*

6. *Did the intervenor issue an RFP for the services provided by legal counsel and consultants? If so, please provide the RFP as well as all responses to the RFP and a description of the scoring system used to select legal counsel and consultants.*

Comments: According to VECC, this question pertains to cost eligibility and/or the appropriate rate to be applied to the hours claimed by the counsel and consultants retained in the matter. This question has nothing to do with cost eligibility. The purpose of this question is to assess the intervenors' efforts to minimize the costs of their representatives that will ultimately be borne by ratepayers.

7. *Did the intervenor attempt to retain legal counsel and consultants with an hourly rate that is lower than the Board approved tariffs? If so, please describe the efforts made. If not, why not?*

Comments: The purpose of this question is to assess the intervenors' efforts to minimize the costs of their representatives that will ultimately be borne by ratepayers. If intervenors can retain representatives at rates below the tariff, those savings should arguably be passed on to ratepayers. To remove any doubt, I wish to express that this question should not be interpreted as a challenge of the intervenor representatives' requisite experience.

8. *Please provide the mandate for the intervenor to intervene in this case.*

Comments: It is agreed that this question pertains to eligibility. Accordingly, the question is withdrawn.

9. *Please explain why in the view of the intervenor it is necessary for the Applicant's ratepayers to pay additional costs for three intervenors to scrutinize the Applicant's revenue requirement when Board staff did the same.*

Comments: I note that this question should have referred to "three" intervenors and not "four". This question is not about eligibility. It is restricted to costs associated with scrutinizing the Applicant's revenue requirement. While the intervenors may have differing interests regarding rate design, they all share the same interest of assessing the reasonableness of the Applicant's revenue requirement. In that regard, depending on the intervenors' responses, an objection may be made that three intervenors (in addition to Board staff), amounts to an unnecessary duplication of efforts. Perhaps only one of the intervenors should have assessed the Applicant's revenue requirement on behalf of all three. I note that section 5.01 of the Practice Direction provides that the Board may consider whether a party "made reasonable efforts to combine its intervention with that of similarly interested parties".

10. If the Board finds that there are duplicative costs, does the intervenor believe such duplicative costs should be recovered from ratepayers?

Comments: This is a straightforward question that directly pertains to the reasonableness of the cost claims. I would be very concerned if an intervenor objected to answering this question.

11. What is the intervenor's fee arrangement with counsel and consultants? Is any component of the counsel's and consultants' remuneration based on performance or the outcome in the proceeding? If so, please provide details.

Comments: The purpose of this question is to determine whether the intervenors' representatives are recovering amounts beyond the amounts they recover from ratepayers. If they do, I may wish to make the argument that the representative costs borne by Whitby Hydro's ratepayers should be reduced by the representatives' over-earned amounts. It would not be appropriate for me to make the argument in the absence of the information requested (ie. there may not be any over-earnings). If I do make the argument, the Board can either accept or reject it, however I should not be precluded from having the opportunity to make the argument. Therefore, I need the information requested.

12. [For SEC only] Please provide the specific legislative authority for a school board to participate either directly or indirectly in a proceeding before the Ontario Energy Board.

Comments: I agree to withdraw this question because it pertains to eligibility. However, the answer to this question is one that the Board may wish to obtain on its own. Under the *Education Act*, school boards are extremely restricted in the activities they may engage in.

In conclusion, I maintain that the remaining and revised questions are relevant to assessing the reasonableness of the intervenors' cost claims. This is not a challenge of the Practice Direction. Rather, it is an assessment that is made in accordance with the Practice Direction.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Taylor', with a stylized, cursive script.

Andrew Taylor