

Andrew Taylor, Energy Law

120 Adelaide Street West, Suite 2500
Toronto, ON M5H 1T1
Tel: (416) 644-1568
Email: ataylor@energyboutique.ca

BY EMAIL and RESS

March 28, 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")

We are writing in regard to the reply submissions filed by the intervenors in regard to their cost claims. We understand that the Board has not provided the Applicant the opportunity to respond to the intervenors' reply submissions, and we are not in fact dealing in this correspondence with the substantive matters that need to be decided by the Board. However we feel compelled to respond because issues were raised that either: (i) fall outside the scope of the topic of cost claims; (ii) require clarification of the record; or (iii) were inappropriate. Our comments are as follows:

- Both the SEC and Energy Probe placed great emphasis on the fact that Whitby Hydro filed its application late, and was tardy during the application process. Notwithstanding that this fact is irrelevant to the issue of their cost claims, the intervenors are aware that key personnel at Whitby Hydro suffered from serious health issues during the rate application process, one of whom recently passed away. While Board Staff were aware we do not expect that the Board itself would be aware. We think that the comments of the intervenors were unnecessary and spiteful .
- In regard to SEC's reply submission, according to SEC, "mistakes and restarts along the way meant that the process had to be suspended, creating further delays". We note that just because an applicant rejects a request to disclose information that it believes is irrelevant, does not amount to a "mistake". In this case, the requests at issue called into question the virtual utility model itself, a model that Whitby Hydro and other utilities have been operating under for years. Whitby Hydro should be commended for ultimately providing the information it believed was irrelevant to avoid timely and costly motions for disclosure that in all likelihood would have been made by SEC. Whitby Hydro's application complied with the Board's filing requirements, and we do not want the record to reflect a sub-standard application as implied by SEC and Energy Probe.
- In regard to Energy Probe's reply submission, to clarify, the comments regarding the need for the additional consultant pertained to Mr. MacIntosh, not Mr. Aiken. Mr. MacIntosh was present during the proceeding, but did not participate. Further, Whitby Hydro has no objections with

VECC's cost claim or VECC's manner of participation in the proceeding - a possibility raised by Energy Probe.

- In regard to the benefit/cost ratio analysis submitted by Energy Probe, Energy Probe attributes the entire reduction in revenue requirement to the actions of the intervenors. This is not a test. The analysis is flawed and self-serving. The analysis does not contemplate the fact that revenue requirement may have been reduced by the same amount by the Board (or by even more) had there been an oral or written hearing.
- Finally, justifying the value of intervenors in that there needs to be many intervenors for a settlement process to take place, as if the settlement conference is an end in itself, takes the issue back to eligibility for intervention and eligibility for cost awards - the very issue that the intervenors themselves complained about in the first instance for being raised by Whitby Hydro. They have now done exactly the same, despite the Board's March 10, 2011 letter.

To repeat, Whitby Hydro felt that it must respond to the inappropriateness and inaccuracies of specific items included in the intervenors' submissions. These comments are not intended to further respond or argue the merits of the submissions on the issues that need to be decided by the Board.

Sincerely,

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

Andrew Taylor