



**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.

**BEFORE:** Paul Sommerville  
Presiding Member

Karen Taylor  
Member

## **DECISION AND ORDER ON COST AWARDS**

On October 29, 2010 the Ontario Energy Board (the “Board”) issued a Notice of Proceeding on its own motion to determine whether Affected Electricity Distributors (as defined below) should be allowed to recover from their ratepayers the costs and damages incurred as a result of the Minutes of Settlement approved on April 21, 2010 by the Honourable Mr. Justice Cumming of the Ontario Superior Court of Justice (Court File No. 94-CQ-50878) and as amended by addenda dated July 7, 2010 and July 8 (the “Minutes of Settlement”) in the late payment penalty class action, and if so, the form and timing of such recovery. The Board assigned File Number EB-2010-0295 to this application.

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.

On November 8, 2010, pursuant to the Notice, the Board received the collective evidence of the Affected Electricity Distributors. This evidence was prepared and filed by the Electricity Distributors Association (“EDA”) on behalf of all Affected Electricity Distributors. On November 12, 2010, Toronto Hydro Electric System Limited (“THESL”) filed limited supplementary evidence that primarily dealt with the second issue on the issues list.

On December 17, 2010, the Board issued Procedural Order No. 1, which set out among other things, the list of intervenors and the schedule for interrogatories and arguments.

The following parties were granted intervenor status: Canadian Manufacturers and Exporters (“CME”), School Energy Coalition (“SEC”), the Electricity Distributors Association (“EDA”), Vulnerable Energy Consumer’s Coalition (“VECC”), Donald D. Rennick, and Joe Stevens and Flora L. Dooley (jointly). The Board granted cost award eligibility to CME, SEC, VECC and Donald D. Rennick. The EDA, Joe Stevens and Flora L. Dooley indicated that they did not intend to seek costs. In its procedural order, the Board reminded Mr. Rennick that as an individual intervenor, the following information should be used as guidance for what costs might or might 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.

On January 13, 2011, the Board issued Procedural Order No. 2, which deferred the date for argument-in-chief from January 17, 2011 to January 20, 2011.

On January 14, 2011, SEC filed two separate Notices of Motion (collectively the “Motions”) in relation to responses provided by the EDA and THESL to certain interrogatories of SEC. On January 17, 2011, the Board issued Procedural Order No. 3,

and sought written submissions on the Motions. The Board issued its Decision on January 25, 2011 dismissing the Motions.

The Board issued its Decision and Order in the main proceeding on February 22, 2011, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by EDA.

The Board received cost claims from CME, Donald D. Rennick, SEC and VECC.

On March 18, 2011, the EDA raised concerns that SEC's cost claim for counsel hours was excessive. The EDA argued that no costs should be awarded with respect to the Motions. The EDA further submitted that 4.1 hours of Mr. Shepherd's time was with respect to the Motions and the majority of Mr. Rubenstein's 41 hours of docketed time was devoted to the Motions and efforts regarding the non-existent transcript. The EDA submitted that SEC's cost claim should be reduced to \$2,650.00.

On March 18, 2011, the EDA objected to Mr. Rennick's claim in its entirety. In its letter, the EDA stated that:

*The Ontario Energy Board's Practice Direction on Cost Orders [sic] does not permit an individual intervenor to submit a cost claim based upon his or her time. Mr. Rennick cannot circumvent this restriction by purporting to submit a claim for his time as a consultant. Even if he could, there was no evidence that Mr. Rennick has any expertise or training which would qualify him as an appropriate consultant in this matter.*

The EDA submitted that there was no evidence that Mr. Rennick has any expertise or training which would qualify him as an appropriate consultant in this matter.

On March 21, 2011, SEC replied to the EDA's objections to the costs claimed. In its letter SEC stated that:

*...costs should be disallowed if a party is not legitimately seeking to be of assistance to the Board, or is not reasonable in how time and effort is spent. In the case of a motion, if it is not reasonable to pursue the motion, the Board should of course consider reducing or denying costs. That is not the case here...*

With respect to the transcript, SEC submitted that had the EDA responded to its interrogatory that the hearing was not transcribed, that would have been the end of it. With respect to the reduction of hours, SEC commented that it believes that a responsible intervenor should review a cost claim before it is submitted, and only request a reasonable amount.

On March 21, 2011, Mr. Rennick replied to the EDA's objection to the costs claimed. Mr. Rennick submitted that he had met the cost eligibility criteria in Section 3 and had followed the cost eligibility process in Section 4 and had satisfied the principles in awarding costs in Section 5 of the Ontario Energy Board's *Practice Direction on Cost Awards*.

### **Board Findings on the Cost Claims of the Eligible Participants**

The Board has reviewed the cost claims filed by CME, Mr. Rennick, SEC and VECC to ensure they were compliant with the Board's *Practice Direction on Cost Awards*.

The Board has determined that Mr. Rennick's cost claim will be disallowed in its entirety. Mr. Rennick's Notice of Intervention filed on November 10, 2010 indicated that he was intervening as a ratepayer of North Bay Hydro. While that Notice also indicated that he was representing the interests of all North Bay Hydro customers, there was no substantiation of the claim that he represented any other ratepayers. In accepting Mr. Rennick's intervention as part of Procedural Order No. 1, the Board specifically indicated that Mr. Rennick was being accepted as an individual intervenor and reminded him that he may not be eligible to receive any costs associated with his time (e.g., the time spent preparing interrogatories, submissions, etc.). While Mr. Rennick included as part of his cost claim his *curriculum vitae* wherein it indicates that he is a Chartered Accountant, the Board finds that his intervention was as an individual ratepayer and not as a consultant or expert and therefore denies his claim for time spent in preparation for the hearing and in writing his argument.

The Board finds that the cost claims of CME, SEC and VECC claims are in accordance with the Board's *Practice Direction on Cost Awards*. The Board therefore finds that CME, SEC and VECC are entitled to 100% of their reasonably incurred costs of participating in this proceeding.

The Board approves the cost claims for each eligible intervenor:

- Canadian Manufacturers and Exporters \$3,590.30;
- School Energy Coalition \$5,053.00; and
- Vulnerable Energy Consumers Coalition \$2,229.51.

The amount payable by the affected electricity distributors is listed in Appendix A to this Decision and Order.

### **Process for Paying Cost Awards**

The Board will use the process set out in section 12 of its *Practice Direction on Cost Awards* to effect the payment of the cost awards. Therefore, the Board will act as a clearing house for all payments of cost awards relating to this proceeding. Invoices will be issued to distributors at the same time as invoices for cost assessments made under section 26 of the Act. The practice of the Board is to issue to each distributor one invoice that covers all cost awards payable by the distributor for the relevant period. As a result, the invoice may cover cost awards payable in relation to a number of proceedings, including this one.

### **THE BOARD THEREFORE ORDERS THAT:**

1. The amounts to be paid by each individual distributor in relation to the costs awarded to each eligible participant are as set out in Appendix A to this Decision and Order.
2. The individual distributors listed in Appendix A to this Decision and Order shall pay the costs awarded to each of the eligible participants as set out in Appendix A.
3. Payment of cost awards referred to in paragraph 2 shall be made to the Ontario Energy Board in accordance with the invoice issued to the individual distributor and shall be due at the same time as cost assessments under section 26 of the Act are due.

**DATED** at Toronto, April 13, 2011.

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

**Appendix A**  
**Board's Decision and Order on Cost Awards**  
**EB-2010-0295**

**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 are recoverable from electricity distribution ratepayers, and if so, the form and timing of such recovery**

<b>Electricity Distribution System Owner/Operator</b>	<b>CME</b>	<b>SEC</b>	<b>VECC</b>	<b>Total</b>
ATIKOKAN HYDRO INC.	2.63	3.71	1.64	7.97
BLUEWATER POWER DISTRIBUTION CORP.	38.04	53.53	23.62	115.19
BRANT COUNTY POWER INC.	12.20	17.17	7.58	36.94
BRANTFORD POWER INC.	31.69	44.60	19.68	95.97
BURLINGTON HYDRO INC.	56.15	79.03	34.87	170.06
CAMBRIDGE AND NORTH DUMFRIES HYDRO INC.	42.53	59.86	26.41	128.81
CANADIAN NIAGARA POWER INC. (Port Colborne Hydro)	32.72	46.05	20.32	99.09
CENTRE WELLINGTON HYDRO LTD.	5.66	7.97	3.52	17.14
CHAPLEAU PUBLIC UTILITIES CORP.	1.36	1.91	0.84	4.12
CHATHAM-KENT HYDRO INC.	27.31	38.44	16.96	82.71
CLINTON POWER CORP.	1.32	1.86	0.82	4.00
COLLUS POWER CORP.	11.01	15.49	6.83	33.33
COOPERATIVE HYDRO EMBRUN INC.	1.22	1.72	0.76	3.69
E.L.K. ENERGY INC.	9.33	13.13	5.79	28.25
ENERSOURCE HYDRO MISSISSAUGA INC.	237.39	334.10	147.41	718.90
ENWIN UTILITIES LTD.	97.57	137.32	60.59	295.48
ERIE THAMES POWERLINES CORP.	12.15	17.10	7.54	36.79
ESPANOLA REGIONAL HYDRO DISTRIBUTION CORP.	2.73	3.84	1.70	8.27
ESSEX POWERLINES CORP.	20.28	28.54	12.59	61.40
FESTIVAL HYDRO INC.	19.24	27.08	11.95	58.26
FORT FRANCES POWER CORP.	3.13	4.41	1.94	9.48
GREATER SUDBURY HYDRO INC.	45.68	64.29	28.37	138.35
GRIMSBY POWER INC.	7.12	10.02	4.42	21.56
GUELPH HYDRO ELECTRIC SYSTEMS INC.	48.82	68.71	30.32	147.84
HALDIMAND COUNTY HYDRO INC.	28.01	39.42	17.39	84.83
HALTON HILLS HYDRO INC.	19.45	27.37	12.08	58.90
HORIZON UTILITIES CORP.	179.13	252.11	111.24	542.48



<b>Electricity Distribution System Owner/Operator</b>	<b>CME</b>	<b>SEC</b>	<b>VECC</b>	<b>Total</b>
HYDRO HAWKESBURY INC.	2.47	3.47	1.53	7.47
HEARST POWER DISTRIBUTION COMPANY LTD.	1.84	2.59	1.14	5.58
HYDRO 2000 INC.	0.70	0.98	0.43	2.11
HYDRO ONE BRAMPTON NETWORKS INC.	125.07	176.02	77.67	378.76
HYDRO OTTAWA LTD.	295.22	415.49	183.32	894.03
INNISFIL HYDRO DISTRIBUTION SYSTEMS LTD.	15.53	21.85	9.64	47.02
KENORA HYDRO ELECTRIC CORPORATION LTD.	4.41	6.20	2.74	13.35
KINGSTON HYDRO CORP.	20.92	29.44	12.99	63.35
KITCHENER-WILMOT HYDRO INC.	67.09	94.42	41.66	203.17
LAKEFRONT UTILITIES INC.	8.83	12.43	5.48	26.74
LAKELAND POWER DISTRIBUTION LTD.	9.22	12.98	5.73	27.93
LONDON HYDRO INC.	115.20	162.13	71.54	348.87
MIDDLESEX POWER DISTRIBUTION CORP.	6.34	8.92	3.94	19.19
MIDLAND POWER UTILITY CORP.	6.71	9.44	4.16	20.31
MILTON HYDRO DISTRIBUTION INC.	24.54	34.53	15.24	74.30
NEWMARKET - TAY POWER DISTRIBUTION LTD.	31.40	44.19	19.50	95.08
NIAGARA PENINSULA ENERGY INC.	55.54	78.17	34.49	168.19
NIAGARA-ON-THE-LAKE HYDRO INC.	9.44	13.29	5.86	28.60
NORFOLK POWER DISTRIBUTION INC.	22.91	32.25	14.23	69.39
NORTH BAY HYDRO DISTRIBUTION LTD.	21.17	29.80	13.15	64.11
NORTHERN ONTARIO WIRES INC.	5.23	7.37	3.25	15.85
OAKVILLE HYDRO ELECTRICITY DISTRIBUTION INC.	59.03	83.07	36.65	178.76
ORANGEVILLE HYDRO LTD.	9.43	13.27	5.86	28.55
OSHAWA PUC NETWORKS INC.	40.05	56.36	24.87	121.28
OTTAWA RIVER POWER CORP.	7.42	10.44	4.61	22.47
PARRY SOUND POWER CORP.	3.56	5.01	2.21	10.79
PETERBOROUGH DISTRIBUTION INC.	28.85	40.60	17.91	87.36
POWERSTREAM INC.	309.74	435.93	192.34	938.01

<b>Electricity Distribution System Owner/Operator</b>	<b>CME</b>	<b>SEC</b>	<b>VECC</b>	<b>Total</b>
RENFREW HYDRO INC.	3.35	4.71	2.08	10.14
RIDEAU ST. LAWRENCE DISTRIBUTION INC.	4.39	6.18	2.73	13.30
ST. THOMAS ENERGY INC.	12.90	18.15	8.01	39.06
SIOUX LOOKOUT HYDRO INC.	3.81	5.36	2.36	11.53
THUNDER BAY HYDRO ELECTRICITY DISTRIBUTION INC.	36.56	51.45	22.70	110.71
TILLSONBURG HYDRO INC.	5.67	7.98	3.52	17.18
TORONTO HYDRO-ELECTRIC SYSTEM LTD.	973.26	1,369.77	604.38	2,947.42
VERIDIAN CONNECTIONS INC.	94.05	132.37	58.40	284.82
WASAGA DISTRIBUTION INC.	7.91	11.13	4.91	23.95
WATERLOO NORTH HYDRO INC.	52.03	73.22	32.31	157.56
WELLAND HYDRO-ELECTRIC SYSTEM CORP.	16.71	23.51	10.37	50.59
WELLINGTON NORTH POWER INC.	3.88	5.46	2.41	11.75
WEST COAST HURON ENERGY INC.	3.94	5.55	2.45	11.94
WEST PERTH POWER INC.	1.79	2.52	1.11	5.43
WESTARIO POWER INC.	17.21	24.22	10.69	52.11
WHITBY HYDRO ELECTRIC CORP.	37.53	52.82	23.31	113.66
WOODSTOCK HYDRO SERVICES INC.	13.62	19.17	8.46	41.24
<b>TOTAL</b>	<b>3,590.30</b>	<b>5,053.00</b>	<b>2,229.51</b>	<b>10,872.81</b>