



EB-2009-0274

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 Whitby Hydro Electric Corporation for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2010.

BEFORE: Ken Quesnelle
Presiding Member

DECISION AND ORDER ON COST AWARDS

BACKGROUND

Whitby Hydro Electric Corporation ("Whitby Hydro") filed an application with the Ontario Energy Board (the "Board") on January 15, 2010, under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) seeking approval for changes to the rates that Whitby Hydro would charge for electricity distribution, to be effective May 1, 2010.

By Procedural Order No. 1 dated March 16, 2010, the Board approved intervention requests from three parties: Energy Probe Research Foundation ("EP"), Vulnerable Energy Consumers Coalition ("VECC"), and the School Energy Coalition ("SEC"). It also determined that EP, VECC and SEC are eligible to apply for an award of costs.

The parties participated in the technical conference on June 17, 2010. The parties then participated in a settlement conference on June 18, 2010, with the assistance of a facilitator. The settlement conference adjourned so that Whitby Hydro would be able to

file responses to undertakings given at the technical conference and to provide additional information related to previous interrogatory responses. Following the provision of this information and responses to interrogatories on it, the settlement conference was re-convened on November 16 and continued on November 17, 2010.

The parties reached a complete settlement on all issues in the application. The Board issued its Decision accepting the cost and rate consequences of the Settlement Proposal on December 20, 2010, and issued its Rate Order on January 19, 2011. The Decision provided for cost claims, objections to any claims, and responses to any objections.

The Board received cost claims from the three intervenors by February 15, 2011. It received a letter from counsel for Whitby Hydro on February 22, 2011, requesting that each intervenor be required to provide additional information in order to assess the reasonableness of the costs claimed. Following responses from each intervenor on February 23, 2011, counsel for the applicant sent a letter on February 24, 2011, modifying and explaining the request in certain respects and withdrawing certain items from the earlier request.

The Board responded by letter on March 10, 2011, indicating that the cost claims were supported by documentation in accordance with its Practice Direction on Cost Awards, and directing that any objections to the claims should be based on information already filed with the Board. The applicant raised two objections in a letter on March 17, 2011. Intervenor responses to the objections were filed by March 28. The Board received further correspondence from the applicant also on March 28, responding to issues raised in the intervenors' responses, and it received a further rejoinder from Energy Probe on March 29, 2011.

BOARD FINDINGS

The Board has chosen to summarize the record to the extent necessary to provide context to its Decision.

Whitby Hydro has raised two objections in its submission of March 17, 2011. Firstly, it objects to an alleged duplication of effort amongst the parties and secondly, it objects to apparent duplication in the instance of an intervenor being represented concurrently by two individuals.

The Board noted in Procedural Order No. 1 that no objections had been received concerning the intervention request of any of the three parties. The interest of various stakeholders may coincide on certain issues, such as the amount of various components of the revenue requirement, while their interests diverge on other issues, such as revenue to cost ratios. While the Board expects eligible intervenors with interests that are closely parallel on all issues to coordinate their efforts in a proceeding in order to reduce cost awards, the Board has not considered it generally necessary to initially identify subsets of the issues in which parties have parallel interests so as to facilitate this coordination of efforts in advance. This application, like other cost-of-service applications, involves many issues that are interrelated in a complex way and as is especially the case in this instance produces a record that evolves through the discovery process. Coordination of efforts is always expected but has greater potential to bear fruit as the proceeding advances and the issues become clearer.

As noted by Mr. Buonaguro in his letter of March 24, 2011,

“ . . . the primary opportunity to legitimately avoid undue duplication and combine interventions in order to avoid unnecessary costs occurs, for the most part at the hearing stage.”

The Board accepts the intervenor's submissions on how they have taken measures to avoid duplication and is satisfied that they have been mindful of the Board's expectations in this regard.

The objective of the settlement agreement process is intended to reduce the overall cost of a proceeding, and the Board considers that this is generally the outcome.. However, the settlement process is confidential such that the Board has no opportunity to assess the contributions made by the respective parties toward reaching a settlement and making costs determinations on the basis of what transpired in the settlement process.

The Board has not considered any submission on the relative value of the participation of any of the parties or individuals involved in arriving at the settlement proposal that the Board has accepted.

However, based on the information submitted by Energy Probe, the Board notes that it was represented by two individuals during most hours of the two day settlement conference. The Board understands that the respective roles of Mr. MacIntosh and Mr.

Aiken are not the same. Nevertheless, the Board considers that one or the other could have fulfilled his role by being available from time to time for consultation by telephone or e-mail. The cost claim by Energy Probe for participation in the settlement conference is based on a total of 23.75 hours. The Board will approve 14.25 hours for combined participation, which is the longer of the two claims plus two hours.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the Ontario Energy Board Act, 1998, Whitby Hydro shall immediately pay:
 - Energy Probe Research Foundation \$26,285.04;
 - School Energy Coalition \$30,029.76;
 - Vulnerable Energy Consumers Coalition \$25,136.41.
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Whitby Hydro shall pay the Board's costs of and incidental to this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, April 21, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary