



EB-2010-0279

IN THE MATTER OF sections 25.20 and 25.21 of the Electricity Act, 1998;

AND IN THE MATTER OF a Submission by the Ontario Power Authority to the Ontario Energy Board for the review of its proposed expenditure and revenue requirement for the year 2011.

BEFORE: Paul Sommerville
Presiding Member

Karen Taylor
Member

DECISION AND ORDER ON COST AWARDS

Background

On November 2, 2010, the Ontario Power Authority (the “OPA”) filed with the Ontario Energy Board (the “Board”) its proposed 2011 expenditure and revenue requirement and fees for review pursuant to subsection 25.21(1) of the *Electricity Act, 1998*. The Board assigned File Number EB-2010-0279 to the application.

On December 13, the Board issued its Decision on Cost Eligibility and approved the intervention requests of the Association of Power Producers of Ontario, HQ Energy Marketing Inc., the Independent Electricity System Operator, Manitoba Hydro, Ontario Power Generation, and Shell Energy North America (Canada) Inc. The Board also

approved Energy Probe Research Foundation (“Energy Probe”), Green Energy Coalition (“GEC”), Low-Income Energy Network (“LIEN”), Pollution Probe, and Vulnerable Energy Consumers Coalition (“VECC”) as intervenors and determined they would be eligible for an award of costs in the proceeding. The Board accepted the Electricity Distributors Association (“EDA”) as an intervenor, but did not make a finding with respect to the cost eligibility request submitted by the EDA. The Board also accepted the Ontario Sustainable Energy Association (“OSEA”) as an intervenor but determined that OSEA was not eligible for a cost award.

On December 14, 2010, the Board issued a Supplemental Decision on Cost Eligibility granting intervenor status and cost award eligibility to the Canadian Energy Efficiency Alliance (“CEEA”).

On December 16, 2010, the Board issued a second Supplemental Decision on Cost Eligibility approving late intervention and cost eligibility requests by the Canadian Manufacturers and Exporters (“CME”) and the School Energy Coalition (“SEC”).

On December 21, 2010, the Board issued a third Supplemental Decision on Cost Eligibility approving late intervention and cost eligibility request by the Consumers Council of Canada (“CCC”).

The Board issued its Decision and Order on July 8, 2011, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by the OPA.

The Board received cost claims from CEEA, CME, CCC, Energy Probe, GEC, LIEN, Pollution Probe, SEC and VECC.

By a letter dated August 5, 2011, the OPA noted the wide individual cost claims range from approximately \$17,000 to \$145,000. OPA also stated that the Board is in the best position to determine the weight it placed on the issues raised and the value it attributed to participation levels of the parties in reaching its Decision.

On August 10, 2011, CEEA filed a reply submission in support of its cost claim of approximately \$145,000.

Board Findings

The Board finds that CME, GEC, VECC, Pollution Probe, Energy Probe, SEC and CCC shall be granted for 100% of their claimed costs of participating in this proceeding. The Board finds that each party's claims are reasonable and will be reimbursed by the OPA.

The Board has determined that it will reduce the cost claims made by CEEA and LIEN.

CEEA's claimed costs (\$145,625.78 including disbursements) are more than double the next highest claim. The Board accepts that CEEA was an active participant in the proceeding, and that its contribution was of assistance to the Board. However, the quantum of the claimed costs is not justified in the circumstances. The Board finds that some of the issues pursued by CEEA were of marginal relevance, and that the total billed hours are excessive when considered against the claims and contributions of other parties. The Board has determined that an appropriate award of costs for CEEA is \$73,000.00, including disbursements

LIEN's claimed costs are \$52, 897.57, plus disbursements of \$921.19. Although the fee charged by the OPA is paid by all utility ratepayers, including low-income consumers, there were few specific "low-income" issues in this case. Although LIEN's contribution to the hearing was not unhelpful, its claimed costs are well in excess of those filed by parties that had a similar level of involvement, such as VECC, SEC and Energy Probe. As the Board noted in its EB-2009-0154 costs decision: "A comparison to the average is not a determinative factor of reasonableness, but is an indication of reasonableness. A claim which is more than twice the average may be reasonable in certain circumstances, for example if the intervenor took a larger role than others in the proceeding or provided expert testimony or otherwise distinguished itself in the proceeding. There are no such circumstances in this proceeding." The Board recognizes that LIEN used two lawyers and an expert consultant to prepare its case; however this cannot justify excessive cost claims. In short, the Board finds that the costs claimed by LIEN do not match its level of contribution to the hearing process. The Board will therefore reduce its claim to \$25,000, including disbursements, which approximately matches the claims filed by VECC, SEC and Energy Probe.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the Ontario *Energy Board Act*, 1998, the OPA shall immediately pay:
 - Canadian Energy Efficiency Alliance \$73,000.00;
 - Canadian Manufacturers and Exporters \$51,884.20;
 - Consumers Council of Canada \$70,780.47;
 - Energy Probe Research Foundation \$26,781.41;
 - Green Energy Coalition \$69,931.19;
 - Low-Income Energy Network \$25,000.00;
 - Pollution Probe \$16,942.14;
 - School Energy Coalition \$25,388.00; and
 - Vulnerable Energy Consumers Coalition \$24,184.76.

2. Pursuant to section 30 of the *Ontario Energy Board Act*, 1998, the OPA shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at **Toronto**, August 25, 2011.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary