



EB-2011-0011

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 Toronto Hydro-
Electric System Ltd. for an Order or Orders granting
approval of initiatives and amounts related to the
Conservation and Demand Management Code;

BEFORE: Marika Hare
Presiding Member

Paul Sommerville
Member

Karen Taylor
Member

DECISION AND ORDER ON COST AWARDS

Toronto Hydro-Electric System Limited ("Toronto Hydro") filed an application with the Ontario Energy Board (the "Board"), dated January 10, 2011 seeking an order granting approval of funding for nine individual conservation and demand management ("CDM") programs.

On February 18, 2011, the Board issued its Decision on Cost Eligibility and approved the intervention request for the Canadian Energy Efficiency Alliance ("CEEA"), but denied its request for costs eligibility. The Board approved the Association of Major Power Consumers in Ontario ("AMPCO"), Consumers Council of Canada ("CCC"), Energy Probe Research Foundation ("Energy Probe"), Green Energy Coalition ("GEC"), Low-Income Energy Network ("LIEN"), Pollution Probe, School Energy Coalition ("SEC") and the Vulnerable Energy Consumers Coalition ("VECC") as intervenors and determined they would be eligible for an award of costs in the proceeding.

On July 12, 2011, the Board issued its Decision and Order on the application and all of the applied for CDM programs found within.

On July 20, 2011, the Board issued Procedural Order No. 4 which outlined the process and timeline for eligible parties to file their cost claims with the Board.

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

Board Findings

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

The Board has determined that it will reduce the cost claim made by LIEN.

LIEN's claimed costs are \$33,198.28, plus disbursements of \$397.06. This claim is based on 124.7 hours in aggregate. LIEN employed the services of two lawyers and a consultant. This number of hours places LIEN's claim at the upper end of all claimants.

The Board's decision to reduce LIEN's claim is predicated on two factors.

First, while LIEN's organizational focus is on the interests of low-income consumers, there were no low-income programs being proposed by Toronto Hydro in this case. While some of the programs being proposed could be thought to have the potential for general effect, that is on all consumers including low-income consumers, the time spent by this intervenor simply is not commensurate with the low-income content of the application.

That there were no low-income programs being proposed by Toronto Hydro was known by all parties from the earliest stages of this case.

On April 27, 2011, the Board issued its Decision and Order on Cost Awards in regards to the Pollution Probe Motion to Review proceeding. Within its Decision and Order, the Board noted that Toronto Hydro's application for Board-Approved CDM programs did

not include any proposed programs primarily targeted to low-income consumers. The Board also noted in that Decision and Order that LIEN's main thrust as an intervenor is the interests of low-income consumers, and there were no low-income specific programs or issues in the case at all.

In the course of its evidence Toronto Hydro directly stated that none of its programs were targeted to low-income consumers.¹

The second reason for the Board's decision to reduce LIEN's claims is rooted in the Board's judgement that LIEN's contribution to the case was marginal, at best. Its examination of applicant witnesses did not enhance the Board's understanding of the issues genuinely engaged in the case. In coming to this conclusion the Board has carefully reviewed the transcript of the proceeding. LIEN's examination of the witnesses seemed to be somewhat concerned with trying to get confirmation that low-income customers would be somehow impacted by the general application programs being proposed. That was not a controversial issue. It was also not in any manner central to what the Board had to decide.

The Board highlights the total hours claimed by LIEN, 124.70, and notes that they are at the upper end of all claimants. The Board is of the view that parties involved in a proceeding need to undertake self-regulation of their time and consequential costs. The Board finds that the value of LIEN's participation in this proceeding, with no low-income specific issues or proposed programs, was low. The Board finds the total costs claimed by LIEN to be unreasonable and non-reflective of the level of participation expected from a party in a proceeding with few, if any, specific issues directly relevant to its main objectives.

In determining the quantum of the reduction, the Board has compared LIEN's hourly total to the number of hours claimed by other participants. There is simply no justification for LIEN's claim of over 120 hours when a comparable intervenor, VECC, claimed less than 50 hours. VECC's contribution to the Board's understanding of the case was in the Board's view more valuable than that of LIEN. The Board finds that LIEN's total claimed hours will be reduced to 45 hours.

The total approved cost award for LIEN has been calculated using 45 total hours which are allocated among its three participants in the same ratios as appeared in LIEN's

¹ EB-2011-0011, Oral Hearing Transcript Volume 2, Page 95 of 186, Line 20-25

original costs claim. This results in a total approved claim of \$11,980.13, plus disbursements of \$397.06, for a total cost award of \$12,377.19.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Toronto Hydro-Electric System Limited shall immediately pay:

- Association of Major Power Consumers \$30,971.58;
- Consumer Council of Canada \$44,943.66;
- Energy Probe Research Foundation \$15,648.25;
- Low Income Energy Network \$12,377.19;
- Pollution Probe \$1,188.24;
- School Energy Coalition \$21,128.00; and,
- Vulnerable Energy Consumers Coalition \$13,433.20.

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

DATED at Toronto, September 9, 2011

ONTARIO ENERGY BOARD

Original Signed By

John Pickernell
Assistant Board Secretary