



EB-2010-0136

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 Kingston
Hydro Corporation for an order approving just and
reasonable rates and other charges for electricity
distribution to be effective May 1, 2011.

BEFORE: Paula Conboy
Presiding Member

Ken Quesnelle
Member

DECISION AND ORDER ON COST AWARDS

Background

Kingston Hydro Corporation ("Kingston Hydro") filed an application with the Ontario Energy Board (the "Board") on August 23, 2010 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, seeking approval for changes to the rates that Kingston Hydro charges for electricity distribution, to be effective May 1, 2011. The Board assigned File Number EB-2010-0136 to this application.

The Board approved three interventions: the Energy Probe Research Foundation ("Energy Probe"); the School Energy Coalition ("SEC"); and the Vulnerable Energy Consumers Coalition ("VECC"). The Board also determined that these intervenors were eligible to apply for an award of costs under the Board's *Practice Direction on Cost Awards*.

The Board issued its Decision and Order on June 23, 2011, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by Kingston Hydro.

The Board received the SEC cost claim on July 14, 2011; the VECC cost claim on July 19, 2011 and the Energy Probe cost claim on August 2, 2011. Kingston Hydro filed its cost claim response on August 16, 2011 noting that the total cost claims for the three intervenors totaled \$85,942.15, 15% higher than the \$75,000 amount forecast in its rate application. Energy Probe and SEC filed their responses to the Kingston Hydro submissions on August 23, 2011 and August 29, 2011 respectively.

Board Findings

The Board has chosen to summarize the record to the extent necessary to provide context to this Decision. Kingston Hydro did not raise any issues with regard to the VECC cost claim. The Board approves the VECC cost claim of \$23,698.31 as filed.

With regard to the SEC cost claim, Kingston Hydro requested that the Board review the SEC claim for reasonableness, citing two areas of concern:

- The SEC claim of \$32,505.44 was 8.4% higher than the amount (just under \$30,000) it had indicated in its final argument and 30% higher than Kingston had budgeted for each intervenor in the application.
- SEC's statement that costs were increased because Kingston Hydro had structured itself in a non-transparent way through its affiliate, Utilities Kingston, as well as some services from the shareholder, the City of Kingston. Kingston Hydro maintained that its application was well-prepared, timely, open and reasonable and that its ratepayers should not be subject to additional costs that are incurred in "an unjustified pursuit for hidden items which proved unsuccessful".

Kingston Hydro submitted that the cost claim for SEC should be reduced by 10% to an amount under \$30,000, as was submitted in the SEC final argument. Kingston Hydro's argument was based in part on its assumption that the Board's Decision on its rate application reflected SEC's estimate provided in its final argument.

SEC's response to these submissions focused on the fact that the voluntary SEC estimate provided in final argument was provided with a clear proviso that the estimate should not be relied on as it is the applicant that controls the time required to deal with a case. SEC noted the longer than usual time required to address Kingston Hydro's reply argument due to its length (41 pages) given the size of the case and the Rate Order which SEC found to be somewhat confusing and requiring clarification on a number of issues.

SEC also questioned the purpose of the Kingston objection as the applicant did not say that the intervenors did not do the work or that the work was not necessary, only saying that the Company's budgeted amounts were lower than the ultimate claims. SEC also argued that the amounts in question were *de minimus* given Kingston Hydro's overall revenue requirement. With regard to the organizational structure issue, SEC provided examples of how additional work was required as a result of information provided by the Company on its affiliate structure. SEC also mentioned that all aspects of an application must be addressed to determine whether they are problematic or not, and if the applicant has a non-transparent structure, more time is required for such a review.

The Board will not adjust SEC's filed cost claims to the amount estimated in its final argument. The Board is not persuaded that there is cause to deviate from its practice direction with respect to cost awards and the methodology to be employed in their consideration. This finding is based in part on the Board's acceptance of SEC's assertion that a longer Reply Argument requires additional resources to deal with all of the issues raised. This reality is not dependent on whether or not the application was well prepared, timely, open and reasonable. The Board accepts that the final argument phase and review of Draft Rate Order was simply more complex than SEC had anticipated. The Board finds that SEC acted responsibly through-out the process and approves its cost claim of \$32,505.44 as filed.

As for the Energy Probe cost claim, Kingston Hydro requested the claim be reviewed for reasonableness as Energy Probe had submitted a claim for 2 people in attendance at each of the settlement conference and the oral hearing while each of the other intervenors submitted a claim for 1 person.

Energy Probe's response to the applicant's submission focused on the materiality of the amounts questioned by the applicant and highlighted the fact that over the two day settlement conference, Energy Probe was represented by one consultant in person the

first day with the other utilizing the Board's telecommunication facility, while on the second day, only the telecommunicating consultant was present.

With respect to the settlement conference, the Board notes that Energy Probe was represented by two individuals. The Board understands that the respective roles of Mr. MacIntosh and Mr. Aiken are not the same and that Mr. Aiken participated in the settlement conference by telephone.

However, as the Board has found in the past, the Board considers that one or the other could have fulfilled his role by being available from time to time for consultation but not claiming simultaneous hours for the conference. The cost claim by Energy Probe for participation in the settlement conference is based on a total of 13.5 hours. The Board will approve 9.5 hours for combined participation, which is the longer of the two claims plus one hour.

The Board reduces the Energy Probe cost claim of \$32,621.37 as filed, by an amount of \$1,235.40 (4 hours x \$290.00 x 1.065 HST). Therefore, the total cost award approved for Energy Probe is \$31,385.97.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Kingston Hydro shall immediately pay the following amounts to these intervenors:

Vulnerable Energy Consumers Coalition, the sum of \$23,698.31.

School Energy Coalition, the sum of \$32,505.44.

Energy Probe Research Foundation, the sum of \$31,385.97.

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

DATED at Toronto, September 14, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary