



EB-2011-0054

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 Hydro Ottawa
Limited for an order approving or fixing just and reasonable
rates and other charges for the distribution of electricity to
be effective January 1, 2012.

BEFORE: Marika Hare
Presiding Member

Ken Quesnelle
Member

DECISION AND ORDER ON COST AWARDS

Background

Hydro Ottawa Limited ("Hydro Ottawa" or the "Applicant") filed an application (the "Application") with the Ontario Energy Board (the "Board") on June 17, 2011. The Application was filed under section 78 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15 (Schedule B) (the "Act"), seeking approval for changes to the rates that Hydro Ottawa charges for electricity distribution to be effective January 1, 2012. The Board assigned File Number EB-2011-0054 to the Application.

On July 29, 2011, the Board issued Procedural Order No. 1, granting the Consumers Council of Canada ("CCC"), Ecology Ottawa, Energy Probe Research Foundation ("Energy Probe"), EnviroCentre, the School Energy Coalition ("SEC") and the

Vulnerable Energy Consumers Coalition (“VECC”) intervenor status. PowerStream Inc. and Horizon Utilities Corporation were granted observer status. Enersource was granted late intervenor status on August 25, 2011. The Board determined that CCC, Ecology Ottawa, Energy Probe, SEC and VECC were eligible to apply for an award of costs, but that EnviroCentre did not meet the eligibility requirements under section 3 of the Board’s *Practice and Direction on Cost Awards*.

The Board issued its Decision and Order on December 28, 2011, in which it set out the process for the filing of the rate order and for intervenors to file their cost claims and to respond to any objections raised by Hydro Ottawa.

The Board received cost claims from CCC, Ecology Ottawa, Energy Probe, SEC and VECC. On February 9, 2012, Hydro Ottawa raised concerns regarding each of the cost claims. Responses were filed by each of the parties.

Costs claimed by Ecology Ottawa

Hydro Ottawa stated that Ecology Ottawa only participated in the technical conference and did not participate in the settlement conference or the oral hearing and did not provide the Board with submissions during the argument phase of the proceeding. Hydro Ottawa submitted that the Board should reject Ecology Ottawa’s claim for cost because it did not meet any of its stated objectives for participating in the rate proceeding. In the event the Board accepted the claim, Hydro Ottawa submitted that the appropriate hourly rate should be \$170 instead of \$330 as a curriculum vitae had not been filed to support the higher hourly rate.

In its response filed on February 17, 2012, Ecology Ottawa indicated that it followed the proceeding closely and would have intervened had the issues it addressed during the technical conference been the subject of further discussion. Ecology Ottawa further submitted that it acted in good faith, provided valuable contributions to both the Board and the Applicant, and submitted that its modest cost claim be accepted. Ecology Ottawa advised that a curriculum vitae had been re-sent to the Applicant.

Costs claimed by CCC, Energy Probe, SEC and VECC

Hydro Ottawa compared the SEC claim with the claims filed by the other parties and submitted that the higher total hours claimed by SEC are related to training of SEC junior counsel, Mr. Rubenstein. Hydro Ottawa submitted that training costs should be borne by SEC and that the SEC hours should be reduced to the average of CCC,

Energy Probe and VECC hours, and allocated to junior and senior counsel for SEC in the same proportion as the claimed hours. Hydro Ottawa determined that this reduction would decrease cost claims by \$24,469.

Hydro Ottawa compared the cost claims filed by CCC, Energy Probe, SEC and VECC in this proceeding with the costs awarded to the same parties in Hydro Ottawa's last cost of service proceeding (EB-2007-0713). Hydro Ottawa determined that the increase is 143%, which it considered to be unreasonably high. Hydro Ottawa submitted that a compounded 10% annual increase over 2008 awarded costs was reasonable, and that this recognized the increase in hourly rates, length and complexity of the 2012 proceeding, and the need and ability of intervenors to be more efficient/productive in rate proceedings.

In response to Hydro Ottawa's objection to the SEC hours claimed, SEC pointed out that senior lawyers are paid at a higher hourly rate because it should take less time than junior lawyers to do similar tasks. SEC asserted that none of the time claimed by Mr. Rubenstein was for training.

SEC also argued that other intervenors relied on SEC counsel to take the lead on the International Financial Reporting Standards ("IFRS") issues, which took a total of 30-40 hours of senior counsel's time. In their submissions, Energy Probe and VECC confirmed that SEC took the lead with respect to IFRS. Energy Probe stated that its claim would be a minimum of 20 hours higher if SEC had not taken the lead on IFRS. Energy Probe asserted that the intervenors did cooperate with each other to minimize cost claims.

CCC submitted that if Hydro Ottawa seeks to reduce CCC's claim then it should be on the basis that the claim is unreasonable. CCC submitted that by any metric, its claim is reasonable and that there is no duplication in time between CCC's consultant and counsel.

In their responses, CCC, Energy Probe, SEC and VECC stated that comparison of EB-2011-0054 with EB-2007-0713 is not appropriate. Parties noted that:

- The amount of pre-filed evidence for EB-2011-0054 was more than double that for EB-2007-0713;
- The volume of interrogatory responses for EB-2011-0054 was almost as large as the pre-filed evidence for EB-2007-0713;
- A technical conference was held for EB-2011-0054, but not for EB-2007-0713;

- The EB-2011-0054 settlement process was longer; and
- Several significant revenue requirement issues were addressed in oral hearing for EB-2011-0054, while only one significant issue went to oral hearing for EB-2007-0713, and not all of the intervenors participated in the oral hearing.

VECC noted that in addition to the differences between the current and previous cost of service application, Hydro Ottawa was one of the first large distributors to have rates rebased followed a full term of 3rd generation IRM.

Board Findings

Costs claimed by Ecology Ottawa

The Board has reviewed the cost claim filed by Ecology Ottawa and finds that the claim is reasonable and should be reimbursed by Hydro Ottawa.

Ecology Ottawa filed correspondence pursuant to Procedural Order No. 1, in which it confirmed that it is not a service provider, identified that it represents consumer interests, and identified the issues it was ready to help the Board determine. On that basis, the Board granted cost eligibility. Ecology Ottawa has informed the Board that, following completion of the technical conference, it concluded that further participation was not required. The Board accepts the claim as the Board considers Ecology Ottawa's explanation of its participation to be reasonable. Ecology Ottawa's conclusion that it need not incur more costs by participating beyond the technical conference illustrates a benefit of the technical conference. The Board had determined at the outset of this process that due to Ecology Ottawa's interests, its participation could be helpful to the Board. Ecology Ottawa submitted that its interests were sufficiently addressed at the technical conference and the Board finds that to be of assistance.

Costs claimed by CCC, Energy Probe and VECC

The Board has reviewed the cost claims filed by CCC, Energy Probe and VECC and finds that the claims are reasonable and should be reimbursed by Hydro Ottawa.

Analysis of and comparisons with cost claims filed and costs awarded in previous cost of service applications is informative, but not determinative of reasonable participation in subsequent cost of service applications. As the intervenors pointed out in their responses, the hours spent and costs claimed depend on scope, complexity and size of the application and the duration and number of subsequent procedural steps. The

Board also notes that in the EB-2011-0054 proceeding, a major application update (840 pages) was filed by Hydro Ottawa on September 14, 2011. The Board does not agree that it is appropriate to determine cost awards based on a simple escalation, or other type of adjustment, of previous cost awards.

The Board accepts that the intervenors made reasonable efforts to co-operate with each other in order to reduce duplication and that generally, there were intervenors that led on certain issues in order to reduce costs, e.g. SEC for IFRS issues.

Costs claimed by SEC

The Board agrees with SEC's observation that a less experienced counsel will require more hours to execute tasks than a senior counsel. This is reflected in the Board's experience based tariff schedule contained in its *Practice Direction on Cost Awards*. It is also reasonable to use a less experienced counsel strategically, e.g. first level review of Board issued documents, such that the total cost claim will be lower even with higher hours.

The Board has reviewed the hours claimed by SEC, and observes that SEC's hours are considerably higher than the average of CCC, Energy Probe and VECC for each phase of the proceeding: preparation, technical conference, settlement conference, hearing and argument. However, the Board also recognizes that SEC took the lead on a complicated issue, the transition to IFRS. As stated above, the Board also agrees that a more junior lawyer will charge a greater number of hours, albeit at a lower rate. Among the comparisons of hours charged for each phase of the proceeding, however, the hours charged by SEC for settlement conference are disproportionate, and the large majority of those hours were charged by junior counsel, Mr. Rubenstein.

Other than the settlement proposal, all aspects of the settlement conference are confidential. While it may very well be that there is a range in hours charged for the settlement conference, depending on which intervenor may be taking the lead in negotiations and document review, the Board would not expect a less experienced counsel to assume this role. The Board finds that the settlement conference hours for Mr. Rubenstein should be reduced from the claim of 44.5 hours to 20 hours. No further reduction to hours is made and the Board finds that the hours charged are reasonable given the contribution made in the proceeding by SEC.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the Ontario *Energy Board Act*, 1998, Hydro Ottawa shall immediately pay:

- Consumers Council of Canada \$58,440.45;
- Ecology Ottawa \$3,752.53;
- Energy Probe Research Foundation \$44,183.77;
- School Energy Coalition \$52,011.00; and
- Vulnerable Energy Consumers Coalition \$50,672.06.

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

DATED at, Toronto, March 5, 2012.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary