



**EB-2012-0414**

**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 the Electricity  
Distributors Association (“EDA”) for a stay of the Decision  
and Order of the Ontario Energy Board (the “Board”) in  
proceeding EB-2011-0120, pending the EDA’s appeal of  
the Decision and Order to the Superior Court of Justice  
(Divisional Court).

**BEFORE:** Christine Long  
Presiding Member

Ellen Fry  
Member

**DECISION ON MOTION TO REVIEW AND  
DECISION AND ORDER ON COST AWARD  
May 2, 2013**

**Background**

The Electricity Distributors Association (“EDA”) applied to the Ontario Energy Board on October 17, 2012 for a stay of the Board’s September 13, 2012 Decision and Order in EB-2011-0120, pending the disposition of the EDA’s appeal of the Decision and Order to the Ontario Superior Court of Justice (Divisional Court).

The Board made provision for written submissions of the parties and for an oral hearing which was held on January 23, 2013 at which the EDA, the Vulnerable Energy Consumers Coalition (“VECC”) and Board staff made oral submissions.

During its oral submissions, VECC requested costs.

On March 7, 2013, the Board issued its Decision (the “Decision”), in which it granted VECC eligibility for a cost award and set out the process for VECC to file its cost claim and to respond to any objections raised by the EDA.

VECC submitted its cost claim on March 14, 2013. On March 26, 2013 the EDA wrote a letter to the Board indicating that while it did not challenge the time VECC’s counsel spent considering the issues raised in the proceeding, in its view VECC had not identified how its interests were engaged by the stay application and VECC had made minimal oral submissions at the oral hearing. The EDA requested that the Board “...fix VECC’s costs at a nominal amount, if any, in light of the narrow issue engaged by this application and VECC’s limited participation, and stay, in respect of that issue”.

On March 27, 2013 the EDA filed a Notice of Motion with the Board for an order, *inter alia*, staying the operation of the Decision with respect to costs granted to VECC pending the determination of the motion; varying the Decision by denying VECC its costs of the application; or in the alternative, providing for the parties to make submissions on VECC’s eligibility for costs in this proceeding.

The EDA submitted that although this was a new proceeding with a new docket number, the Board did not undertake a process to determine cost eligibility.

The EDA also took issue with the length of VECC’s written and oral submissions and submitted that VECC did not address the test for granting a stay, make a formal request for cost eligibility or identify its interest in the proceedings.

On April 3, 2013 VECC wrote to the Board responding to the EDA’s correspondence and Notice of Motion. In that response, VECC submitted that having reviewed the EDA and Board Staff’s written submissions, VECC determined that it would not file duplicative materials, and noted the transcript references where it identified its stake in the proceeding and addressed the specific issues raised by the stay.

## **Board Findings**

### Request for Stay

The Board’s consideration of the EDA’s Notice of Motion has operated *de facto* as a stay of the Board’s Decision concerning VECC’s costs. The Decision established a process for the submission by VECC of its cost claim and for the EDA to object to such claim. The EDA’s Notice of Motion was received during that process. The Board has

considered the Notice of Motion prior to making a determination with respect to VECC's claimed costs.

### Cost Eligibility

VECC is a party that primarily represents the direct interests of consumers and accordingly falls squarely within the eligibility criteria established in the Board's Practice Direction on Cost Awards. Although this proceeding has a different docket number than EB-2011-0120, it is a continuation of the same proceeding. Accordingly, the Board granted VECC costs in this proceeding as a party that had been granted costs in EB-2011-0120. The Board considers that it would not have served the interest of procedural efficiency to require VECC to undergo a formal process to request cost eligibility a second time.

The Board notes that section 2 of the *Statutory Powers Procedure Act* provides that rules made by the Board concerning ordering costs, such as the *Practice Direction on Cost Awards*, "shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits."

The Board also notes that section 41 of the Board's Rules of Practice and Procedure ("Rules") addresses cost eligibility and cost awards and that section 2.01 of the Rules provides that the Board's Rules "...shall be liberally construed in the public interest to secure the most just, expeditious, and efficient determination on the merits of every proceeding before the Board." It is also noteworthy that section 1.03 of the Rules allows the Board to "...dispense with, amend, vary or supplement, with or without a hearing, all or part of any Rule at any time, it is satisfied that the circumstances of the proceeding so require, or it is in the public interest to do so."

In this case, the Board deviated from the strict procedures of the Practice Direction on Cost Awards in the interest of procedural efficiency.

The Board also notes that the EDA did not make a submission at the oral hearing on VECC's request for a cost award.

The Board therefore confirms that VECC is eligible for a cost award in this proceeding.

### VECC's Cost Claim

The Board considers that VECC participated responsibly in the current proceeding and that it is reasonable for VECC to have spent time reviewing the filings and developing a

position in order to determine how extensive a submission was appropriate. The Board encourages parties not to duplicate other parties' efforts if it can be reasonably avoided. The Board is satisfied that, in this instance, in making its very brief written submissions, VECC was furthering the Board's objective.

The Board found VECC's submissions at the oral hearing to be helpful in addressing issues that had not already been addressed by Board Staff.

Board's Finding on the Motion

In light of the above findings the Board denies the EDA's Motion.

The Board finds that VECC is eligible for 100% of its reasonably incurred costs of participating in this proceeding. The Board finds that VECC's cost claim is reasonable, subject to a minor reduction to comply with the Ontario Government's *Travel, Meal and Hospitality Expenses Directive*.

**THE BOARD THEREFORE ORDERS THAT:**

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, the EDA shall immediately pay:
  - Vulnerable Energy Consumers Coalition \$6,345.02.
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, the EDA shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

**DATED** at Toronto, May 2, 2013

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary