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BY EMAIL and RESS

September 10, 2013
Our File No. 20120459

Ontario Energy Board
2300 Yonge Street
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2012-0160 – Peterborough 2013 Rates

We are counsel for the School Energy Coalition. Pursuant to the Board's Decision in this matter, SEC is providing in this letter its response to the Applicant's September 6, 2013 objections to SEC's cost claim.

This response is organized using the same numbering as the objection letter. The comments in Appendix A to the objection letter are included in section 5.

1. The Application

The Applicant objects that its Application was complete and straightforward, and therefore shouldn't have taken much time to review.

On completeness, this is a red herring. Applications must be complete to be processed, and intervenors rarely spend much time on an application before the Board concludes that it is complete.

In this case, the Applicant, unlike most LDCs, did not file a complete application, and a month later had to file additional material at the Board's request. In that period, SEC docketed no hours. This is thus not a relevant factor.

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On the complexity of the filing, the Applicant appears to misunderstand the nature of complexity in the regulatory process. Complexity is not because of the number of pages in the application, or how much money is involved. Complexity is driven by things that are out of the ordinary. It is those components that take the extra time.

In this case, the Applicant and its shareholder have chosen to operate their utility through a corporate structure that they admit is "unique". By burying all of their expenses, including even capital spending, in an affiliate, the Applicant claims to achieve cost efficiencies, perhaps at the expense of transparency. Whether or not either that claim or that impact is true, the regulatory process is clearly complicated by such an opaque structure.

For example, the unique structure meant we had to look in considerable detail at the financial statements of affiliates, something that is not normally required. Those statements were then the subject of a confidentiality claim, meaning that additional time was required by the person reviewing them a) to make submissions on the claim for confidentiality itself, and b) to maintain records and keep those documents secure. This is not something that can be delegated to administrative staff. Confidentiality claims always add to the cost of the proceeding.

The unique structure also meant that interrogatories were more complicated. For example, a key aspect of the review of every application is the 2-K, since compensation is such a large proportion of revenue requirement. When the 2-K doesn't track the actual compensation of a particular entity, more work is required to reconcile the compensation data for the utility with the financial data of the relevant corporation. Compensation allocation also becomes an issue.

In this case, SEC filed six pages of interrogatories. A quick look will reveal that a number of them are driven by the structure of the utility.

At every stage of the process, understanding what is really being spent and proposed is more complicated if it is commingled with the data for an affiliate, rather than being spent directly in the regulated entity. A good example, and another utility with a complex structure, is Kingston. In 2010, the SEC cost claim for that case was $32,044 plus disbursements. Kingston objected to the SEC claim, but the Board did not accept the objection.

The Applicant makes one other comment, saying that it "expedited the Application" through reaching a complete settlement of all issues. This surprising comment fails to recognize: a) that most applications settle, and b) that claiming after the fact that a settlement was done to "limit regulatory burden" is inappropriate. Settlements should only be accepted by parties if they reflect an appropriate revenue requirement, rates, and other conditions. That is what happened here.

The Applicant in fact agrees. Here is what the Applicant actually signed on to:

> ***"This Agreement will also allow PDI to: maintain current capital investment levels and, where required, appropriately increase capital investment levels in infrastructure to ensure a reliable distribution system; manage current and future staffing levels, skills and training to ensure regulatory compliance with Codes and Regulations; promote***

> ***conservation programs including the Ministry of Energy directives as a condition of PDI's distribution licence; and provide the high level of customer service that PDI's customers expect." [page 9 of the approved Settlement Agreement]***

2. Comparison with Other Intervenors

The Applicant complains that SEC's costs are higher than those of Energy Probe or VECC. This misconstrues the intervenor process.

Intervenors don't all do the same thing. If they did, that would not only be duplicative and wasteful, but a squandering of our limited resources. Instead, different intervenors focus their attention on different things. The contents of the application will therefore dictate which intervenors will spend the most time on it. By way of example, if an application has significant load forecast issues, it is likely that VECC will have the highest cost claim, because they will do the most thorough review of those issues. SEC's review of those issues will be more cursory, focusing on components that have a disproportionate impact on schools. The same sort of unequal effort will be found if the application has significant cost allocation issues, or capital spending concerns, or affiliate complexities, etc. Different intervenors bring different specialized expertise to the table, and we rely on each others' expertise because we have limited resources. We can't all do everything.

The Board will be aware that sometimes the SEC claim is the highest, sometimes VECC, sometimes Energy Probe, and sometimes other intervenors. If SEC were consistently higher than others, that might well be a concern. That has not been the case, and the Board is well aware of that.

We also should make one other comment on this point. When an Application is being handled by the undersigned, Jay Shepherd, it is often the case that SEC takes the lead in both the negotiation and the drafting of any settlement. The reason is the undersigned's lengthy experience negotiating and drafting thousands of commercial agreements. This sometimes means SEC has to spend some extra time, but the overall cost of the process is reduced by the application of that experience.

3. Comparison to Other SEC Cost Claims

The Applicant seeks to compare this cost claim to others from SEC, on the assumption that the size of an applicant's revenue requirement is a good test of comparability. This is not correct.

Size of revenue requirement is often, in fact, an indicator that an intervenor should spend more time on the application. However, that is not because of the number of zeros. That is because larger utilities often have more complexities in their applications, such as layers of management and division of responsibilities, more expert reports, more complicated capital plans, and things like that.

In this case, the Applicant had more complexities than many other utilities, by reason of their unique structure. It should come as no surprise that the review took longer than, say, SEC's work on Thunder Bay or Sudbury. By contrast, the London Hydro application was relatively

simple. If anything, it is a little surprising that London claim was higher than the Peterborough claim.

4. <u>"Inefficient and Duplicated"</u>

Deb Devgan at no time worked for SEC as a law clerk. SEC and this law firm have never had a law clerk. When she was hired, it was to be trained as an energy consultant, based on her experience as a researcher in the documentary film business. Over three years, that is what we did, writing off a lot of her early hours for training purposes.

The Applicant applies a wrong paradigm to the use of more than one person in the review of an application. It is certainly true that sometimes (e.g. Mark Rubenstein and the undersigned), it is efficient for a junior person to do most of the work, and a senior person to review it. When Mr. Rubenstein first started doing this, that was our preferred structure. On the other hand, the Board will know that, as Mr. Rubenstein has developed, SEC often doesn't even claim review hours in many cases. They are small numbers. The senior/junior system is working.

The more common paradigm in energy regulation, though, is that counsel relies on a consultant to do a review of specific areas of the application. If you take a look at the VECC cost claim, for example, you will see that consultant and counsel time are about the same, with two consultants sharing the work on that side. If you look at the Energy Probe claim, it is 100% consulting time, but the work is divided up between two consultants. There are many variations.

In this case, Ms. Devgan was assigned certain parts of the Application, reviewing evidence and drafting IRs for those areas. Primary responsibility for the matter was always with the undersigned. The work assigned to Ms. Devgan was designed to save costs, by assigning work that was time-intensive to a person with a lower hourly rate.

Thus, there is no "traditional" weighting. That is not how it works. Intervenors are expected to use good judgment in their internal division of responsibility, so that the overall cost of the process is kept down. SEC does that consistently, as our track record shows, and we did that here.

5. <u>Dockets</u>

The complaint about the SEC dockets is completely inexplicable. This law firm usually has the most detailed dockets of any intervenor (in part because of the financial reporting requirements of our client SEC), and our docket detail and format have been accepted by the Board consistently for more than ten years.

One of the specific complaints relates to the phrase "Many emails", which the undersigned uses many times in the dockets. The undersigned sends or receives between 50 and 200 emails every single day on OEB proceedings. The Applicant says "The OEB process is not conducted by email." That is just not correct. Communications between intervenors are usually by email, as are most communications with the Board. Most documents are received or sent by email. While it is true that the Applicant is not included in many emails (because the intervenors are discussing matters amongst themselves), that is not indicative of the importance of the

electronic medium in Board processes. It is increasingly important because it saves a lot of time and resources.

Another specific complaint is research. The justification is "The approved charge out rates for intervenors are quite high in relation to professional firms with significantly more experience." This is simply wrong. The undersigned is more experienced than any of the utility counsel we deal with regularly. There are no exceptions. Notwithstanding that, most utility counsel have higher hourly rates than the maximum allowed for cost claims. This is an underlying unfairness in the cost award rules, and to have this statement made turning the facts backwards is quite ironic.

In any case, SEC does not charge for basic research. This is a specialized area, and we are involved because we have that specialized knowledge. Even if the hourly rates do not reflect our high level of specialized knowledge, we certainly don't charge to learn it.

However, in many applications we have to do research specific to the application. For example, if an LDC claims it has low operating costs relative to its peers, we have to do research to assess whether that is correct. (We have models that already have much of this information, but we still have to develop application-specific models to ensure that the comparison is to the appropriate peers.) Similarly, if an LDC claims that a particular new maintenance protocol is becoming an industry standard, we have to find external sources to test that claim. There are many such examples, and most applications require at least some external research.

In this case, there was no basic research included in the claim. The only research was matters that were specifically raised by the Application, and not part of the normal knowledge base of a specialized intervenor team.

Appendix A contains three categories of specific comments to which we will respond:

1. Several times the Applicant complains that the undersigned spent more time on something than Deb Devgan (e.g. drafting IRs). The undersigned had carriage of this matter. Deb Devgan was in a support role, looking at specifically assigned areas, and those areas of concentration were different from the undersigned. The comparison is inapt.

2. SEC spent 2.1 hours total reviewing the confidentiality claim, including the confidential information itself, and drafting our submissions. The submissions were relatively brief because we try not to be prolix (not always succeeding), and because the Board already understands these issues well. This was a reasonable amount of time, somewhat on the low side compared to other proceedings.

3. The Applicant complains about the time spent by SEC counsel related to the review of the settlement agreement. A standard form agreement certainly takes less time than one that has a lot of unique drafting. However, all agreements require a thorough review, and a 99-page agreement (with appendices), covering $50 million of rates over four years, cannot be skimmed. Further, when you review an amended agreement, you do not simply look at the amendments. With few exceptions, experienced counsel will

always review the whole agreement. SEC counsel has a lot of experience in reviewing settlement agreements (and other agreements). We know how to do it efficiently and effectively. Unless the Applicant is alleging that counsel was padding his dockets, which does not appear to be the allegation, it is clear that the review of the agreement was what can normally be expected in these circumstances, and was not inefficient.

Conclusion

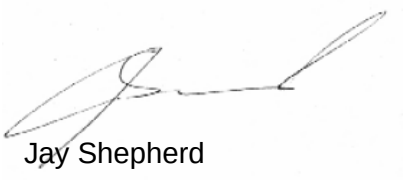
SEC was, frankly, surprised that this Applicant complained about the SEC cost claim. It is their right to do so, of course, but it appears to have been based on lack of understanding of regulatory realities. This claim was within a normal range based on the complexity of the corporate structure and on the needs of the regulatory process as it unfolded.

Further, this is a utility that filed for a 4.2% rate increase, and ultimately agreed that a 2.7% rate decrease would be a reasonable result. The million dollar a year difference over the next four years is a saving to the ratepayers. The total cost claims of less than $40,000 seem like a bargain (1% of the amount saved), especially compared to the $175,000 of legal and consulting costs recovered by the Applicant from the ratepayers for this Application [Appendix 2-M, line 6].

It is therefore submitted that the SEC cost claim should be approved unamended.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.



Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties