



EB-2012-0160

**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  
Peterborough Distribution Inc. for an order approving just  
and reasonable rates and other charges for electricity  
distribution to be effective May 1, 2013.

**BEFORE:** Ken Quesnelle  
Presiding Member

Allison Duff  
Member

**DECISION AND ORDER ON COST AWARDS**  
**October 1, 2013**

**Background**

Peterborough Distribution Inc. ("PDI") filed a complete application with the Ontario Energy Board (the "Board") on March 23, 2013 under section 78 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that PDI charges for electricity distribution, to be effective May 1, 2013.

On April 23, 2013, the Board issued an Order for Interim Rates and Procedural Order No. 1, granting the Energy Probe Research Foundation ("Energy Probe"), the School Energy Coalition ("SEC") and the Vulnerable Energy Consumers Coalition ("VECC") intervenor status and cost award eligibility.

On August 22, 2013, the Board issued its Decision and Order, in which it set out the process for intervenors to file their cost claims and for PDI to respond. Cost claims were submitted by SEC, Energy Probe and VECC.

PDI objected to SEC's cost claim on the grounds it was high relative to claims of other intervenors in this proceeding and in other applications. PDI suggested SEC's cost award be reduced to \$15,365.80, in line with both Energy Probe and VECC's cost claims. PDI indicated that SEC's costs were inefficient and duplicative as SEC employed two people to work on the file and SEC did not appear to leverage their relative experience and rates to efficiently manage overall costs. In addition, PDI indicated SEC's time dockets did not provide sufficient detail to support its cost claim.

PDI also objected to Energy Probe's cost claim for a second consultant to attend the settlement conference and submitted that Energy Probe's costs award be reduced by \$326.85. PDI indicated this reduction would be consistent with the Board's Decision in EB-2012-0107, in which the applicant was responsible for paying for only one representative per intervenor at the settlement conference.

PDI had no objections to VECC's cost claim.

SEC replied to PDI's objections and submitted its cost claim was in the normal range based on the needs of the regulatory process for this Application, as it unfolded. SEC indicated the unique nature of PDI's corporate structure increased the complexity of the Application, thus requiring a more extensive review compared to utilities of similar size. SEC submitted it allocated work to save costs by assigning time-sensitive work to the person with the lower hourly rate. Finally SEC noted its time docket detail had been accepted by the Board for more than ten years.

Energy Probe replied to PDI's letters of objection and submitted that the Board award Energy Probe and SEC full cost recovery. Energy Probe acknowledged that SEC had taken a lead position in a number of areas of evidence review.

## **Board Findings**

The Board expects intervenors to coordinate their participation to achieve efficiencies and minimize the overall cost of a proceeding, to the extent possible. This goal is

accomplished in part when certain intervenors take the lead on reviewing specific areas of an application. As a result, it is common for the Board to receive a range in cost claims for a proceeding.

The settlement process is confidential and the Board cannot assess the individual contributions made by individual intervenors. However in this proceeding, the Board notes SEC was the only intervenor to file correspondence related to PDI's corporate structure and the provision of interrogatory responses on a confidential basis. In addition, SEC indicated it had taken the lead on a number of issues and in the review of the Settlement Agreement. Energy Probe's submission provided corroboration. Finally, the Settlement Agreement, the product of the regulatory process in this Application, included numerous adjustments to PDI's Application, evident of intervenor participation across a broad range of issues, requiring varying degrees of expertise. For these reasons, the Board cannot predicate its cost award decision on a comparison of average costs among intervenors in this proceeding. It is reasonable to expect SEC's cost claim to be higher than other intervenors given these circumstances. The Board will not place any weight on comparisons to cost claims submitted in other applications, awarded by other Board panels.

PDI raised the issues of inefficiency and duplication of effort in its review of SEC's and Energy Probe's cost claims. At the settlement conference, the Board acknowledges Energy Probe was represented by two people, but does not consider a one-hour overlap in attendance by a second representative to be unreasonable. With respect to SEC, PDI questioned the total preparation time of 85.1 hours for 2 individuals, which was 2.4 to 2.5 times greater than the preparation time claimed by Energy Probe and VECC. The Board finds no evidence of duplication in SEC's time docket as preparation hours were billed on different days. The Board acknowledges the explanations provided by SEC in its time docket are brief, but accepts SEC's submission that its more junior consultant was assigned time-intensive work at a lower hourly rate in order to save costs.

The Board has reviewed the cost claims of Energy Probe, SEC and VECC to ensure that they are compliant with the Board's Practice Direction on Cost Awards. The Board finds that all parties are eligible for 100% of their reasonably incurred costs of participating in this proceeding. The Board finds that the claims of Energy Probe, SEC and VECC are reasonable and each of these claims shall be reimbursed by PDI.

**THE BOARD THEREFORE ORDERS THAT:**

1. Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, PDI shall immediately pay the following amounts to the intervenors for their costs:
  - Energy Probe Research Foundation \$13,988.53;
  - School Energy Coalition \$22,243.00; and
  - Vulnerable Energy Consumers Coalition \$16,388.95.
2. Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, PDI shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

**DATED** at Toronto, October 1, 2013

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary