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Our File No. 143166

VIA EMAIL, RESS AND COURIER

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4

Attention: Kirsten Walli
Board Secretary

Dear Ms. Walli:

Re: EB-2014-0002 - BOMA's Response to Horizon's Objection to its Cost Claim

BOMA is writing in reply to Horizon's objection to its cost claim contained in its letter to the Board of January 26, 2015. BOMA's claim was for \$63,607.50 in fees and an additional \$5,744.64 in disbursements. Horizon is suggesting that BOMA's claim should be reduced by \$24,806.10 (or 39%). In BOMA's view, this proposal is egregiously unfair, unwarranted and punitive, and would result in BOMA's recovery being substantially less than the other major participants in the proceeding.

First, as Mr. Shepherd noted in his claim on behalf of Schools, Horizon's case was a complex case; one of the very first custom IR cases. It was also a massive filing; one of the largest applications ever filed, excluding Toronto Hydro; and much larger than the major gas utilities filings. Horizon filed approximately 4,000 pages of evidence in four volumes on April 14, 2014. It also filed four volumes of IR Responses, or approximately 4,800 pages, a total of nearly 10,000 pages of evidence. While one can never read all the evidence in a case such as this, responsible intervenors must attempt to read a large part of both the prefiled evidence and the IR Responses. BOMA also prepared and filed ninety-two IRs, which covered virtually all of the major issues in this proceeding. The Settlement Conference was lengthy and complicated. The Settlement Agreement, filed September 22, 2014, was 65 pages long.

Second, Horizon compared BOMA's hours for selected portions of the proceedings with those of the "average" intervenor. A more realistic and fair way to look at hours is to look at the total hours. Notwithstanding the fact that the cost claim form, as drafted, requires the hours/fees to be broken down among various components, the fact is that the largest number of hours are spent reading and assessing and understanding the evidence, in order to effectively conduct all of the segments of the work that flow from that, including preparation of IRs, preparation for the Issues Day, the Technical Conference, the Settlement Conference, and the Oral Hearing. Thus, the division of the "preparation hours" is somewhat arbitrary, and can be misleading, and a comparison based on those boxes is misleading.

Third, Horizon compared BOMA's hours to the hours of the "average intervenor". However, it included in the average the claim of one intervenor who played a minor role in the proceeding (the Sustainable Infrastructure Alliance), and of one other intervenor who billed at a much lower rate than the five senior intervenors (\$245 vs. \$330). Furthermore, in BOMA's view, the dollar amount of fees is more appropriate than the hours as a comparator because it reflects the higher rates of more experienced intervenors. The fee bills for the four senior intervenors (billing at \$330) who participated in every phase of the proceeding, including the oral argument, were Schools, \$58,477.50, Energy Probe, \$42,628.86, VECC, \$46,510, and BOMA, \$63,607.50.

The average of the fees of the four senior intervenors that participated in all phases of the proceeding was approximately \$49,500.00, or nearly \$50,000.00. Mr. Shepherd, Mr. Janigan, Mr. Aiken, and I attended virtually every hour of the proceeding, including every hour of the very complicated Settlement Discussions. BOMA's bill exceeded that of Schools by only about \$5,000.00, which was approximately the amount Schools saved by having Mr. Rubenstein do 37.5 of Schools' 175 hours spent on the project at an hourly rate of \$170.00. Indeed, BOMA spent only 17 hours more than Schools. So, Horizon is not correct to say that BOMA's hours or fees were much larger than those of intervenors of comparable experience and level of participation in the hearing, or were generally inappropriate.

A reduction of BOMA's claim of the magnitude sought by Horizon would result in BOMA's fee claim being reduced to \$38,801.00 (of which \$5,744.00 would be for disbursements), leaving a fee payment of \$33,057.00, which is far below the fee claim of other full-time senior participants in the hearing (see above). That is an unconscionable and punitive proposal.

With respect to disbursements, BOMA did initially ask for a hard copy of the application. However, we were told that it would take a few days to get them due to the need to have them printed and sent. I was committed to travel out of town the next morning, for two weeks, and wanted to take parts of the Application with me to commence my review. We, therefore, asked for the memory stick so we could print the material internally that afternoon. To expedite matters, we did most in our print shop, but some on our large copier. There was no attempt to profit by this approach; it was simply necessary in the circumstances. We note that other intervenors filed for disbursements, one for about the same amount as BOMA, a second for about \$1,700.00. BOMA submits that, in the circumstances, it is unfair to deny it recovery of its printing and copying costs.

In conclusion, BOMA respectfully requests the Board to sustain BOMA's claim for both fees and disbursements.

Yours truly,

FOGLER, RUBINOFF LLP



Thomas Brett

TB/dd

cc: Horizon Utilities Corporation (*via email*)