



EB-2014-0055

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 Algoma
Power Inc. for an order approving just and reasonable
rates and other charges for electricity distribution to be
effective January 1, 2015.

BEFORE: Ken Quesnelle
Presiding Member and Vice Chair

Allison Duff
Member

DECISION AND ORDER ON COST AWARDS
May 5, 2015

Background

Algoma Power Inc. (Algoma Power) filed a complete cost of service application (the Application) with the Ontario Energy Board (the OEB) on May 12, 2014 under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the rates that Algoma Power charges for electricity distribution, to be effective January 1, 2015.

The OEB granted the Algoma Coalition, Energy Probe Research Foundation (Energy Probe) and the Vulnerable Energy Consumers Coalition (VECC) intervenor status and cost award eligibility to participate in the proceeding to hear the Application.

The OEB established the process for intervenors to file their cost claims, for Algoma Power to object to the claims and for intervenors to respond to any objections raised by

Algoma Power. The OEB also established a timetable for filing cost claims after the issuance of the Final Rate Order in the proceeding.

The OEB received cost claims from the Algoma Coalition, Energy Probe and VECC.

On February 13, 2015, Algoma Power filed a letter with the OEB indicating that it had no issues with VECC's cost claim. Algoma Power's only objection to Energy Probe's cost claim was the cost of two consultants concurrently attending the settlement conference. Algoma Power had a number of concerns with the cost claim of the Algoma Coalition:

- meal expenses should conform with the *Ontario Government's Travel, Meal and Hospitality Expenses Directive* (the Directive);
- transportation expenses and details of costs including HST should be provided according to the OEB's *Practice Direction on Cost Awards*;
- accommodation costs were much higher than those of Energy Probe's;
- legal/consultant fees of \$37,426.50 were high compared to Energy Probe's and VECC's fees of \$24,576.50 and \$26,813 respectively.

Algoma Power indicated that both Energy Probe and VECC scrutinized a much broader range of issues in more detail than the Algoma Coalition. As a result, Algoma Power submitted that the Algoma Coalition's fees should be reduced to \$26,813, the next highest cost claim filed in the proceeding.

The Algoma Coalition responded to Algoma Power's comments acknowledging that some meal expenses were incorrect, yet maintained that the taxi expenses were in accordance with the Directive, the HST calculations were correct and accommodations were booked responsibly.

The Algoma Coalition disputed Algoma Power's comments with respect to legal consultant fees. The Algoma Coalition argued that Algoma Power had failed to supply any material supporting its submission that the Algoma Coalition's claim should be reduced to \$26,813. Algoma Coalition submitted that suggesting its cost claim be reduced to the higher of VECC and Energy Probe's cost claims was outside the Directive. If the OEB were to endorse this practice, it would necessitate a high degree of coordination between independent parties to compare the number of hours spent during a proceeding. In addition, as each party pursues unique mandates, it would be

inappropriate, impractical and the expectation would interfere with the ability of parties to independently pursue their own goals before the OEB.

The Algoma Coalition relied on the proposition expressed by the Ontario Superior Court of Justice in *Basdeo (Litigation Guardian of) v University Health Network*¹ to support its submissions. The Ontario Superior Court of Justice indicated that when assessing fees, the courts should not second-guess the time spent by counsel in preparation or conduct of a trial unless the total is grossly excessive or the matter has been “over lawyered”. The Algoma Coalition noted that the quantum of its costs was not grossly excessive nor had its intervention been over lawyered. Algoma Coalition indicated that it elected to have Mr. Harmar (a junior associate) work under Mr. Cassan to keep costs as low as possible in the circumstances.

Board Findings

The Board has reviewed the cost claims filed by VECC, Energy Probe and the Algoma Coalition.

The Board reduces VECC’s claim by \$10.05 to comply with the government’s *Travel, Meal and Hospitality Expenses Directive* and to correct a calculation error.

The Board reduces Energy Probe’s claim by \$694.91 as it is the Board’s practice to enable one participant per intervenor to claim costs for attending a settlement conference.

The Board has reviewed the Algoma Coalition’s cost claim in detail. The Board appreciates that the Algoma Coalition retained two lawyers of different seniority in order to reduce costs. The Board does not find that the Algoma Coalition’s intervention and participation was “over lawyered”. However, in retaining two lawyers and an expert consultant, case management expenses were high resulting from the number of meetings and conference calls to coordinate activities and provide updates among the party. The complexity of the Algoma Coalition’s case management was a result of its own organization structure. The Board is not convinced the Algoma Coalition’s case management costs were correlated or driven by the Application, issues or proceeding

¹ *Basdeo (Litigation Guardian of) v. University Health Network*, [2002] O.J. No. 263 (S.C.J.)

alone. The Board finds it appropriate to reduce the Algoma Coalition's case management claim by one third, thereby reducing the claim from 30.75 hours to 20.50 hours.

In addition, the Board reduces the claim of Mr. Harmar by 6 hours at \$165/hour for travel to and from the OEB hearing on October 19 and 21, 2014, based on the affidavit evidence as filed. The claim of Mr. Harmar also requires a reduction of \$19.62 for meal charges to comply with the Directive.

The Board reduces the cost claim of Mr. Cassan from \$300 to \$290 per hour or \$403.97 to correct the cost award tariff and by \$403.01 to comply with the Directive.

The Board reduces the cost claim of Mr. Reid by \$1,065.41 from a total of \$4,330.39 to \$3,264.99. Of the reduction, \$673.39 was related to the use of a mileage rate of \$0.55 per kilometer rather than the \$0.41 rate required by the Directive. An additional \$277.73 was disallowed relating to hotel expenses as a 5% markup and meal charges were included in the hotel claim. There were smaller disallowances of \$62.33 for meals, \$36.46 for air travel and \$18.68 for taxi travel to adjust those costs to conform to the Directive.

With the exceptions noted above, 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 adjusted claims of VECC, Energy Probe and the Algoma Coalition are reasonable and that each of these claims shall be reimbursed by Algoma Power.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, Algoma Power shall immediately pay the following amounts to the specified intervenors for their costs:

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| • The Algoma Coalition | \$45,309.90; |
| • Energy Probe Research Foundation | \$26,462.22; and |
| • Vulnerable Energy Consumers Coalition | \$28,638.52. |

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

DATED at Toronto, May 5, 2015

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary