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January 15, 2016

PIAC FILE # 6481

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2700- 2300 Yonge Street
Toronto, ON
M4P 1E4

VIA E-Mail

Dear Ms. Walli:

**Re: EB-2014-0101 – Oshawa PUC Networks Inc.
Correspondence re Cost Claims Rates Application EB-2014-0101**

VECC is in receipt of the correspondence dated January 14, 2016 from Oshawa PUC Networks Inc. (Oshawa) concerning the cost claims filed by intervenors in the above noted proceeding. It contains Oshawa's breakdown of the claims filed in that proceeding including hours and amounts. The thrust of Oshawa's comments appears to be solely directed its comparison of the size of intervenor claims rather than the scope or merits of VECC's intervention itself. The comments will thus be addressed from that standpoint.

VECC does believe that comparisons between cost claims can be useful in identifying a significant outlier claimant, but the comparison should present more than percentages calculated on a rather small sample without reference to work done, and make use of the principles that have been developed by the Board in the assessment and determination of cost claims. These principles include:

1. It is the hours claimed in an intervention that forms the basis for assessing whether a claim is an outlier in relation to the work done in any comparison of claims of intervenors undertaking similar tasks. The costs award decision of the Board in West Coast Huron Energy Inc. (WCHE), EB 2012-0175 (a copy attached) is illustrative of that principle. In WCHE, the cost claim, which was slightly less than double the other intervenor claims, was allowed because the hours claimed were in the range of the two other intervenors, as the increase was due to the higher rate charged for the personnel engaged in the intervention.

In the Oshawa proceedings, VECC's claim was, in fact, actually 46 hours less than one intervenor, and some 32 hours more than the next largest intervenor claim. In VECC's view, that comparison is reasonable in establishing that VECC's claim is not an outlier, much less a significant one, as it was well within the range of its intervenor peers.

2. The total hours claimed must also be reasonable in light of the tasks performed. The Oshawa case involved the presentation of a Custom IR, still something of a novelty, with a number of additional utility-specific features and a full suite of issues that went through an extensive settlement process and a number of days of oral hearings and lengthy argument. Hydro One DX's Custom IR presented in EB 2013-0416 involved the expenditure of 352 hours of professional time that was claimed in the top intervenor cost claim approved in that proceeding. Horizon's Custom IR, presented in EB 20014-0002, involved hearings shortened by a partial settlement. The top intervenor claim in the Horizon proceeding was allowed at 175 hours in the subsequent cost award decision. While this is a rather limited yardstick, it would appear that VECC's second highest time expenditure of 210 hours claimed for full participation in all aspects of Oshawa's custom IR proceeding is not discordant with the quantum of work allowed as recoverable in similar proceedings.
3. If the first and second principles are met, a dollar difference can arise between the claim for the highest cost claim amount and the next largest claim and be acceptable. Such differences have ranged from \$6000 in the Horizon decision noted above, to \$15,000 in the Hydro One DX Decision and \$17,000 in the OPG proceeding, EB 2013-0321. In this case, while the \$8000 difference between VECC's claim and the next highest claim is not insubstantial, it arises for the reasons noted above and it does not make VECC's claim an outlier by the application of the common sense principles of the Board's cost claim policy.

The Oshawa submission and percentages cited obscure the simple fact that the VECC intervention was well within the range of reasonableness for time spent on a comprehensive intervention in a complex application. That reasonableness is shown both by a comparison of hours spent with other intervenors and a perusal of cost claim hours claimed in other recent custom IR applications. The veteran (some might say aged) VECC team's hourly rate contributed to a higher billed amounts, but the difference was well within a normal zone of tolerance as the hours spent on the intervention are themselves within the appropriate range. In the result, VECC respectfully requests that its claim be approved as submitted.

Yours truly,



Michael Janigan
Counsel for VECC

Cc: Oshawa – Phil Martin – regulatory.affairs@opuc.on.ca
- David Savage – regulatory.affairs@opuc.on.ca
Counsel – Ian Mondrow – ian.mondrow@gowlings.com
All Parties – via email

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2012-0175

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 West Coast
Huron Energy Inc. for an order approving or fixing just and
reasonable distribution rates and other charges, to be
effective May 1, 2013.

BEFORE: Marika Hare
Presiding Member

Emad Elsayed
Member

DECISION AND ORDER ON COST AWARDS
October 21, 2013

Background

West Coast Huron Energy Inc. ("WCHE") filed an application with the Ontario Energy Board (the "Board") seeking approval for changes to the rates that WCHE charges for electricity distribution effective May 1, 2013. The complete application was filed on February 14, 2013 under section 78 of the *Ontario Energy Board Act*, 1998, S.O. 1998 c. 15, (Schedule B).

On April 1, 2013, the Board issued Procedural Order No. 1, granting the Association of Major Power Consumers of Ontario ("AMPCO"), the School Energy Coalition ("SEC") and the Vulnerable Energy Consumers Coalition ("VECC") intervenor status and cost award eligibility.

On August 29, 2013, the Board issued its Decision and Rate Order which set out the process for intervenors to file their cost claims and to respond to any objections raised by WCHE.

On September 17, 2013, WCHE filed its response to the cost claims filed and stated that the cost claims for SEC and AMPCO were in line with its expectations. WCHE submitted that the costs submitted by VECC were almost double the costs of each of the other two intervenors. WCHE suggested that the Board reduce the claim of VECC to bring the costs into a comparable range with the other intervenors.

In response, VECC argued that the amount of working hours spent on the WCHE application by each intervenor was roughly similar among the parties (AMPCO 54.0 hours, VECC 61.6 hours and SEC 70.2 hours). VECC stated that VECC's bill was greater due to the fact that there were different billing rates among VECC's team members and those of the other two intervenors, plus the fact that VECC's disbursements included a travel expense of \$676.44 by VECC's counsel.

Board Findings

The Board accepts the cost claims of AMPCO, SEC and VECC.

The Board finds that VECC's number of hours is approximately the average between SEC's and AMPCO's hours, and finds the time spent to be reasonable. The Board agrees with VECC that the difference is in the hourly rate. The hourly rate is set by the Board, based on the number of years of experience of the counsel or consultant.

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 AMPCO, SEC and VECC are reasonable and each of these claims shall be reimbursed by WCHE.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, WCHE shall immediately pay the following amounts to the intervenors for their costs:
 - Association of Major Power Consumers of Ontario \$11,593.80;
 - School Energy Coalition \$11,934.00; and
 - Vulnerable Energy Consumers Coalition \$21,505.08.

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

DATED at Toronto, October 21, 2013.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary