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### **BY EMAIL and RESS**

February 1, 2016  
Our File No. 20150004

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

### **Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

### **Re: EB-2015-0004 – Hydro Ottawa Custom IR – SEC Cost Claim Reply**

We are counsel for the School Energy Coalition. Hydro Ottawa has, by letter dated January 26, 2016, which we note was not sent to SEC, objected to SEC's cost claim in this matter. Pursuant to the Board's Decision dated December 22, 2015, these are SEC's reply comments with respect to Hydro Ottawa's objection.

### **General**

1. SEC was surprised that Hydro Ottawa objected to our costs, even though they have a history of doing so. As the Board will be aware, all SEC cost claims are carefully reviewed for reasonableness before they are finalized, and we regularly write down components if we do not feel it is appropriate to claim them. As a result, we do not get a lot of challenges to our claims.
2. In this case, Hydro Ottawa chose to file a Custom IR application, and so should have expected to experience substantial costs associated with that process. Apparently they did, as they included in rates \$131,722 for intervenor costs (Appendix 2-M, updated June 29, 2015), escalating annually from 2016 to 2020, for a total amount of about \$685,000, even though for years 2017-2020 they will have minimal annual update costs. In non-rebasing years, their intervenor costs have generally been below \$80,000 per year. They declined to estimate one-time costs for this Application (IR 4-Staff-24). Further, they have included external legal and consulting costs for their regulatory applications of more than \$900,000



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over the next five years, which is in addition to their internal costs. Most of that would, of course, be related to this Custom IR application. In total, their amounts included in rates provide them with ample budget to cover the claimed intervenor costs, and all of their other costs of this Application. To object to the level of the cost claims in this case seems out of step with their own budgets.

3. Against those substantial budgets, they had intervenor cost claims much lower than they expected. To our additional surprise, they state in their letter that the intervenor cost claims are \$225,143.29, knowing that is not correct. The intervenor cost claims are actually \$199,242, since the rest of the total is HST, which is neither paid by the utility (they get an input tax credit), nor retained by the intervening parties (it is paid to the government).
4. We also note that Hydro Ottawa says that VECC's hours went down from 165.3 hours in 2011 to 71.8 hours in the current case. This is not correct. VECC's hours in the current case are 182.05, an increase over 2011, and the total for all intervenors is 643.2 hours, approximately the amount of time spent on the pole rental issue. It is odd that Hydro Ottawa got the dollars right for VECC, but failed to see that the dollars they said were claimed for 71.8 hours would mean an average hourly rate of \$834.24. This is clearly not possible.
5. They also provide the Board with two SEC comparisons to EB-2011-0054 which they know are not correct. In Table 3, they list SEC's hours in 2011 as claimed, failing to note that the Board reduced those hours by 24.5 due to time spent by our student (Mr. Rubenstein) related to the ADR. SEC's actual hours on which costs were awarded in the 2011 case were 249.7 hours, almost identical to this case.
6. Then, in Table 4, Hydro Ottawa compares costs awarded (not claimed, as in Table 3), but fails to point out to the Board that the SEC costs in 2011 did not include HST. The actual comparison, with HST in neither figure, is about \$191,000 in EB-2011-0054, and about \$199,000 in EB-2015-0004, an increase of about 4%. Even that, however, is a bit problematic. If you compare only the four regular, experienced intervenors that participated in both proceedings (VECC, CCC, Energy Probe and SEC), the costs claimed actually go down, from \$188,233 to \$186,264.
7. Even that, however, fails to properly describe the situation. In this case, there was a significant sub-hearing relating to pole rental charges. Mark Rubenstein of our firm took the lead on this, together with VECC, on behalf of all of the intervenors, and spent approximately 70 hours defending the interests of ratepayers in that collateral, contested hearing. That increased SEC's costs from under \$55,000 to the total of \$66,400 claimed.
8. We note that, if you segregate the pole rental charges from the SEC costs, our costs claimed are actually slightly less in dollars than our original EB-2011-0054 claim, and our hours drop by about 32%. This latter is due to SEC's decision to have more experienced counsel take the lead on a Custom IR application seeking \$982 million from customers over the 2016-2020 period (Ex. F/1/1, p. 2). It is worthwhile to note that using more experienced counsel did not result in any material increase in cost, despite the considerably greater complexity in this proceeding compared to the last one.



9. Hydro Ottawa says, in their letter:

*“Tables 3 and 4 reveal that despite a significant reduction in the total number of hours spent by intervenors on Hydro Ottawa’s 2016-2020 Custom IR application there remained an approximate 8% cost increase to be absorbed by Hydro Ottawa (based on total). Hydro Ottawa believes more can and should be done to ensure cost efficiencies result from time efficiencies particularly in light of Hydro Ottawa’s requirements to do the same.”*

a) As noted above, the cost increase is 4%, not 8%, and the costs excluding pole rentals are actually a reduction. Further, the decrease in hours is not 27%, as claimed, but 12%.

b) The costs are not being “absorbed” by Hydro Ottawa, who as noted above have ample budget, collected from the ratepayers, to cover this as well as their own substantial costs. What the claims do is erode Hydro Ottawa’s five year regulatory cost surplus.

c) Different consultants and counsel have different rates, reflecting different experience levels and therefore the efficiency and quality of their work. SEC has demonstrated that they are able to do the same work with fewer hours by using more experienced counsel. This is not always the case, but it was here. It is odd that Hydro Ottawa would complain that we have the same costs with lower hours. Of course we do. That is how it is supposed to work.

**Interrogatories**

10. Hydro Ottawa complains that SEC spent 56.4 hours “preparing interrogatories” (or 7 days, they say, which of course assumes that intervenors have the luxury of working 8 hour days). There are many problems with this complaint.

11. What Hydro Ottawa fails to point out is that “preparing interrogatories” is the only category in which to put all of the time spent reviewing the pre-filed evidence of the Applicant, analysing the data (including preparing comparisons to other LDCs), assessing initial client positions on that data, and only then actually drafting the additional discovery questions for the Applicant. In this case, there was about 25% more pre-filed evidence than the last case, and it included expert evidence on benchmarking. As well, of course, there was the fact that five years of cost data, rather than one, was being provided and had to be reviewed. To be efficient, it is imperative that an intervenor spend sufficient time on this initial review and analysis.

12. We note that Hydro Ottawa claims VECC spent 10.5 hours preparing interrogatories. That is not correct. The correct figure appears to be 58.9 hours.

13. What Hydro Ottawa also fails to note is that SEC, in the EB-2011-0054 case, which was much simpler in its issues, spent about 55 hours up to and including the interrogatory drafting, i.e. the same activities. That time was less efficient, because a lot of it was being



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done by a law student, but it was nonetheless a similar number of hours. Those hours were not reduced by the Board in that case.

14. Considerably more important, though, is that in this proceeding SEC filed 26 detailed questions, with many sub-questions, and included in that discovery thorough comparative and benchmarking analysis. SEC took the lead, as it normally does, on the comparisons with other LDCs, preparing spreadsheet models analysing the performance of the Applicant relative to its peers, and asking specific questions about aspects of those comparisons. SEC also took the lead in reviewing the econometric benchmarking evidence filed by Hydro Ottawa, again preparing spreadsheet models to test the conclusions of the expert, and their practical implications.
15. SEC notes that, in part because of our emphasis on analysis at the front end of the process, our time spent in preparing for ADR is somewhat less than other parties.
16. SEC submits that the time spent by SEC on the review of the application, the analysis of the issues, and the preparation of interrogatories, was not only reasonable, but contributed to the success of the process and the favourable outcome for all parties.

**Settlement Proposal**

17. Hydro Ottawa complains that SEC spent 47.7 hours in the process of editing, revising, and finalizing the Settlement Proposal. SEC is at a disadvantage in responding to this, of course, since we cannot tell the Board the details of what transpired during the ADR process. However, given that Hydro Ottawa believes it is acceptable to refer to how long the intervenors spent preparing their first offer (which may be skirting the line of privilege and confidentiality) there are some things we can say.
18. Because SEC counsel has extensive past experience in commercial agreement drafting, it is the normal practice amongst the intervenors for SEC to take the lead in the drafting process for the Settlement Proposal. Hydro Ottawa admits this, we believe, and it is in fact no secret.
19. In this case, we went back to the draft Settlement Proposals, and find that we were required, in this process, to do extensive edits and commentary on not just one draft, but three. All of them had more than a few needed revisions. While it is not unusual to have three rounds of drafting, particularly in a complex settlement, it is quite unusual to have the level of revisions and commentary necessary in this case, on all three drafts.
20. In the Kingston case, also a Custom IR, our Proposal Preparation hours were 19.3 hours. In the Guelph case, which was a rebasing under 4<sup>th</sup> Generation IRM, our Proposal Preparation hours were 21.9 hours. In the Horizon Custom IR case, our Proposal Preparation hours were 18.8 hours. When we are budgeting cases in advance, we generally assume 20 hours for Proposal Preparation, unless the case is particularly difficult or complex.
21. Thus, we agree that our hours working on the Settlement Proposal in this case were unusually high. The primary reason for that is that we had to spend more time than normal



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working to get the drafting properly reflective of the agreement between the parties, and suitable for presentation to the Board. This was in no way the result of any inefficiency on the part of SEC.

22. We note that, in addition, this case required further post-ADR discussions and drafting, mostly included in the Proposal Preparation line, in response to Procedural Order #10 (working capital allowance) and Procedural Order #11 (land and buildings). In total this added about 10 hours to that category of costs.

23. SEC therefore submits that the time spent by SEC on Proposal Preparation in this case was reasonable in light of what we had to deal with, and ultimately provided value to the process in an efficient manner.

**Conclusion**

24. As noted earlier, SEC was taken aback when it received an objection from Hydro Ottawa, in light of the efficient approach we took to this proceeding, and the favourable result that was achieved for all parties, while dealing with a complex application.

25. SEC submits, based on the above analysis, that

- a. Hydro Ottawa's overall costs comparisons to 2011 are ill-founded and, in several cases, factually incorrect.
- b. Hydro Ottawa's objections to SEC's time spent on Application review/analysis/interrogatories, and on Proposal Preparation, are not justified and should be rejected by the Board.
- c. SEC's overall cost claim represents efficient participation in a complex proceeding, and should be approved as filed.

All of which is respectfully submitted.

Yours very truly,  
**JAY SHEPHERD P. C.**

Jay Shepherd

cc: Wayne McNally, SEC (email)  
Interested Parties