



**Ontario Energy Board
Commission de l'énergie de l'Ontario**

**DECISION AND ORDER ON COST
AWARDS**

EB-2018-0082

**ERTH POWER CORPORATION AND WEST
COAST HURON ENERGY INC.**

**Application for approval to amalgamate and continue operations
as a single electricity distribution company**

BEFORE: Ken Quesnelle
Presiding Member

Cathy Spoel
Member

February 19, 2019

Corrected - February 22, 2019

INTRODUCTION AND SUMMARY

This is a decision of the Ontario Energy Board (OEB) on cost claims filed with respect to an ERTH Power Corporation and West Coast Huron Energy Inc. (collectively, the Applicants) proceeding.

ERTH Power Corporation and West Coast Huron Energy Inc. filed an application on March 14, 2018 under sections 18 and 86 of the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B)*, for approval to amalgamate and continue operations as a single electricity distribution company.

The OEB approved the Vulnerable Energy Consumers Coalition (VECC), Mr. James McCartney, and Mr. Gord Garland as intervenors. VECC and Mr. Garland requested and were granted cost award eligibility¹.

On December 20, 2018, the OEB issued its Decision and Order in which it set out the process for intervenors to file their cost claims; for the Applicants to object to the claims; and for intervenors to respond to any objections raised by the Applicants.

The OEB received cost claims from VECC and Mr. Garland. No objections were received from the Applicants.

Findings

The OEB has reviewed the claims filed to ensure that they are compliant with the OEB's *Practice Direction on Cost Awards* (Practice Direction). As discussed below, the VECC cost claim is accepted, and the Garland cost claim (with the exception of disbursements) is rejected.

Procedural Order No. 2 confirmed Mr. Garland's intervenor status in his personal capacity. Procedural Order No. 2 also provided guidance on the cost awards Mr. Garland, as an individual, would be eligible to claim:

Individuals that represent their own interests should carefully review the OEB's *Practice Direction on Cost Awards* for information about the types of costs and disbursements that an individual may claim. For example, while wage or salary losses incurred by an individual intervenor as a result of participating in an OEB

¹ Mr. McCartney did not request eligibility for a cost award.

hearing may be claimed, those individuals will not generally be permitted to claim fees for their own time under the OEB's Cost Award Tariff.

Mr. Garland has requested a total cost award of almost \$34,000.00 in fees, plus \$40.50 in disbursements (both inclusive of HST). It appears that Mr. Garland claimed his own time for consulting and case management services based on the OEB's Cost Award Tariff. That approach is not acceptable. With the exception of disbursements, the OEB does not agree that the costs being claimed by Mr. Garland were costs incurred by him.

Section 6.04 of the Practice Direction contemplates certain costs that may be considered unique to parties that are "natural persons" (individual intervenors such as Mr. Garland). It provides that "A party that is a natural person who has incurred a wage or salary loss as a result of participating in a hearing may recover all or part of such wage or salary loss, in an amount determined appropriate by the Board." However, Mr. Garland is not making a claim for recovery of wage or salary losses, nor has he provided any evidence in this regard.

While the OEB will not allow Mr. Garland's cost claim, the OEB has determined that it will grant Mr. Garland an honorarium of \$500. Section 3.08 of the Practice Direction provides that "The Board may, in appropriate circumstances, award an honorarium in such amount as the Board determines appropriate recognizing individual efforts in preparing and presenting an intervention, submission or written comments."

In arriving at the amount of the honorarium to be awarded, the OEB notes that a significant amount of the material Mr. Garland placed on the record was outside the scope of the proceeding or was of limited relevance to the issues to be decided. In its Decision on Motion and Procedural Order No. 5, the OEB denied in their entirety the group of motions brought by Mr. Garland for additional information beyond that provided by the Applicants in their responses to interrogatories. However, the OEB notes that Mr. Garland made a genuine effort to participate meaningfully and responsibly in the proceeding.

The awarding of an honorarium is determined on a case by case basis. The OEB will approve the disbursements claimed by Mr. Garland in the amount of \$40.50 (including HST).

The OEB accepts VECC's claim.

The claim of VECC and the honorarium and disbursements of Mr. Garland shall be reimbursed by the Applicants.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, ERTH Power Corporation and West Coast Huron Energy Inc. shall immediately pay the following amounts to the intervenors for their costs:

- Vulnerable Energy Consumers Coalition \$6,493.94
- Mr. Gord Garland \$540.50

2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, ERTH Power Corporation and West Coast Huron Energy Inc. shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice. All costs will be shared on an equal (50:50) basis between ERTH Power Corporation and West Coast Huron Energy Inc.

DATED at Toronto February 19, 2019

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary