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Ontario

DECISION AND ORDER ON COST AWARDS

EB-2019-0143

NIAGARA-ON-THE-LAKE HYDRO INC.

**Motion to Review and Vary the Ontario Energy Board's Decision
and Order dated April 23, 2019 re Niagara-on-the-Lake Hydro Inc.'s
2019 Distribution Rate Application (EB-2018-0056)**

BEFORE: Susan Frank
Presiding Member

Michael Janigan
Member

Robert Dodds
Member

October 16, 2019

INTRODUCTION AND SUMMARY

This is a decision of the Ontario Energy Board (OEB) on cost claims filed with respect to a Niagara-on-the-Lake Hydro Inc. (NOTL Hydro) motion to review and vary portions of the OEB Decision in EB-2018-0056 (Motion).

On April 29, 2019, NOTL Hydro filed a notice of motion to review and vary the April 23, 2019 Decision and Order of the OEB in the EB-2018-0056 proceeding on NOTL Hydro's application for electricity distribution rates effective May 1, 2019 (Decision). NOTL Hydro takes issue with the way the Decision dealt with the Operating, Maintenance and Administration expense (OM&A) for the 2019 test year and claims that the difference between NOTL Hydro's proposed 2019 OM&A budget and the approved OM&A budget in the Decision is an error that has a material impact on the utility.

The OEB granted any party that was determined to be eligible for costs in the EB-2018-0056 proceeding eligibility for costs in this Motion.

On September 12, 2019, the OEB issued its Decision and Order on the Motion and set out the process for intervenors to file their cost claims, for NOTL Hydro to object to the claims and for intervenors to respond to any objections raised by NOTL Hydro.

The OEB received cost claims from SEC and VECC. On September 23, 2019, NOTL Hydro filed a letter stating that the cost claim filed by SEC is for \$2,259 plus HST while the cost claim filed by VECC is \$4,785 plus HST. NOTL Hydro noted that both the service providers for VECC were at the rate of \$330 per hour while 87% of SEC's hours were at a rate of \$230 per hour. NOTL Hydro further noted that it expected that more experienced and expensive service providers should be more efficient in their time. NOTL Hydro requested that the cost claim filed by VECC be reduced to \$2,000 plus HST in order to be consistent with the SEC cost claim. NOTL Hydro noted that the Motion decision cited SEC eight times while it only cited VECC once.

On September 27, 2019, VECC responded to NOTL Hydro's objection and noted that NOTL Hydro's objections are based largely on the relative costs submitted by SEC as compared to VECC. VECC noted that NOTL Hydro seeks to move VECC's claim towards SEC's in an attempt to "average" the claims or worse, to set a "ceiling" for interventions to be the lowest of all filed costs claims. VECC submitted that its choice of consultant and advisors was reasonable given their work was reasonable for the matters at issue and the tasks undertaken.

Findings

The OEB has reviewed the cost claims of VECC and SEC to ensure that they are compliant with the OEB's *Practice Direction on Cost Awards* (Practice Direction).

The OEB notes that one of the intents, and values, of the practice of including intervenors with cost awards in OEB proceedings is to receive other viewpoints which may vary and help ensure the rendering of a balanced and fair decision. The number of times an intervenor is referenced in a decision is not necessarily indicative of its value or costs.

The OEB further agrees that the invoicing for services rendered is not intended to be an "averaging" or "lowest cost" exercise, which would defeat the purpose of the process as cited above.

The OEB finds the approaches taken and time spent by intervenors in a proceeding will not, and should not necessarily, always be the same.

The OEB also notes that the hourly rates for SEC's and VECC's counsel and consultants vary. Sections 6.06 and 6.10 of the Practice Direction states that legal and analyst / consultant fees will be accepted in accordance with the Tariff at Appendix 'A' of the Practice Direction. The Tariff provides for an hourly rate of \$330 for counsel and consultants with over 20 years' experience and the rate was correctly applied to the hours expended by VECC's legal counsel and consultant.

The OEB has determined that the time spent by each of the intervenors on their submissions on the Motion is reasonable and both of the invoices fall within the expected range of value for and of service.

The OEB finds that the claims of SEC and VECC are reasonable and each of these claims shall be reimbursed by NOTL Hydro.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Niagara-on-the-Lake Hydro Inc. shall immediately pay the following amounts to the intervenors for their costs:

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- School Energy Coalition \$2,552.67
 - Vulnerable Energy Consumers Coalition \$4,973.53
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Niagara-on-the-Lake Hydro shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

DATED at Toronto October 16, 2019

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar and Board Secretary