



BY EMAIL and RESS

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May 7, 2020
Our File: HV20190001

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Christine Long, Registrar & Board Secretary

Dear Ms. Long:

Re: EB-2018-0319 – Enbridge Open Bill – Reply to Objection

We are counsel to the HVAC Coalition (“HVAC”). We have received the letter from Enbridge dated May 7th commenting on our cost claim in this matter, and we offer the following brief comments in reply.

HVAC has provided a detailed commentary along with our cost claim as to the various steps in the process. Enbridge has not commented on whether the time and effort spent by HVAC during that process was too much, too little, or the appropriate amount. This is not surprising, as the many steps in which HVAC had to be involved, and the many details that needed to be addressed, clearly required the time and effort HVAC spent.

Enbridge has only one comment: the HVAC claim is higher than the other four cost-eligible intervenors. HVAC is, in this respect, an “outlier”.

We note that there is no information on the legal and consulting costs incurred by other intervenors (the Large Billers, or Vista), or with Enbridge. None of them are required to file cost claims, so the Board does not get visibility on the time and effort they invested in this process.

Limited to the cost-eligible intervenors, we have broken down the claimed hours as follows (excluding IGUA, who ceased their involvement early on):

Comparison of Cost Claims

<i>Category</i>	<i>HVAC</i>	<i>BOMA</i>	<i>EP</i>	<i>VECC</i>
Interrogatory Preparation	36.7	1.5	10.5	4.3
Interrogatory Responses	47.1			6.5
ADR Preparation	43.9	5.5	16.5	7.8
ADR Attendance	33.0	6.5	20.0	14.8
ADR Proposal	32.4	12.1	3.5	
Oral Hearing Preparation	36.9		5.0	11.3
Oral Hearing Attendance	12.0		8.0	8.0
Argument	25.2	32.3	14.0	14.5
Totals	267.2	57.9	77.5	67.2

As a general comment, it would be clear to the Board that, throughout this process, HVAC took the lead among the intervenors on most of the issues, and in most of the steps in the process. This was not because the other intervenors lacked interest, or failed in any way to participate fully. They did. Rather, it was because HVAC had the longest history with the issues, and had the most background knowledge.

It will be clear from the record that, of these parties, HVAC posed the most comprehensive (multiple) sets of interrogatories, and generated the most data from those interrogatories.

During the several stages of ADR, there was no doubt that the primary negotiation was between the Large Billers, Enbridge, and HVAC. This is a continuation of the previous negotiations on Open Bill dating back to 2007 and prior, which were also time-consuming and very detailed.

That is not to discount in any way the contributions and value added by the three customer groups. This was about the customers, after all, and the customer groups were active and engaged participants. However, they would agree, we think, that it was HVAC that led the customer-side positions, prepared drafts of possible customer protection modifications, and similar things. It was also HVAC that was most actively involved of the cost-eligible intervenors in the drafting of the two settlement proposals presented to the Board.

HVAC also had numerous sidebar discussions with non-cost-eligible parties on key issues in the proceeding, as is apparent from the dockets. This was not a usual negotiation, because there were not two “sides”, but rather multiple points of view that had to be balanced and, in the end, satisfied.

The ADR-related hours reflect this level of effort. The other three intervenors averaged a total of 28.9 hours in the ADR parts of the proceeding. HVAC invested 109.3 hours in



these activities, but was involved in many more meetings, negotiations, and drafting activities. Most of the issues in the proceeding were resolved by negotiation.

In the oral hearing, HVAC necessarily had to attend the whole hearing. It was also the only-cost eligible intervenor to lead written and oral evidence, which involved reviewing the HVAC written evidence in depth, and witness preparation. HVAC also took the lead in cross-examining Enbridge. As a result, the HVAC hearing preparation time was 36.9 hours. Of the three others, one did not participate in the hearing, and the other two averaged 8.2 hours of hearing preparation.

HVAC only had slightly more time spent on argument (25.2 hours vs. an average of 20.3 hours for the other three), but we believe the Board will agree that, likely as a result of its extensive involvement in the process, HVAC provided the most comprehensive analysis of the issues in its argument.

As we noted in our cost claim cover letter, this proceeding was somewhat unusual, in part because what the Board saw in person was only the tip of the iceberg, the hearing of two unsettled issues at the end of a lengthy proceeding with multiple rounds of evidence and discovery and ADR. HVAC submits that the time and effort by HVAC was reasonable and necessary, and it paid off in further protections for customers, an improved program, and an efficient process with most key items settled.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation

A handwritten signature in dark ink, appearing to read 'Jay Shepherd', written over a light blue horizontal line.

Jay Shepherd

cc: Martin Luymes, HVAC (by email)
Interested Parties (by email)