

October 28, 2015

File 11

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VIA PUROLATOR COURIER

ATTENTION: BOARD SECRETARY
ONTARIO ENERGY BOARD
P O BOX 2319
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27th FLOOR
TORONTO ON M4P 1E4

RECEIVED

OCT 29 2015

ONTARIO ENERGY BOARD

Dear Sirs:

**Re: EB-2015-0051 - Algoma Power Inc.
– 2016 Electricity Distribution Rates**

**Re: Motion Re Costs of Algoma Coalition
Our File No.: 12524-8**

Attached please find:

- 1) Original and one copy of Motion Record of Algoma Coalition with respect to the above-noted matter;
- 2) Original and one copy of Affidavit of Service respecting service of Motion Record upon the Applicant and Intervenors.

We ask that you please file the enclosed documents with your Board with respect to our Motion re Costs.

Should you have any questions or require further information, please advise.

Yours very truly,
WISHART LAW FIRM LLP

Tim J. Harmar

TIM J. HARMAR
Telephone Ext.: 233
Email: tharmar@wishartlaw.com

TJH:lh
Enclosures

excellent solutions.

October 28, 2015

**VIA EMAIL AND
PUROLATOR COURIER**

**ONTARIO ENERGY BOARD
P O BOX 2319
2300 YONGE STREET
27th FLOOR
TORONTO ON M4P 1E4
ATTENTION: BOARD SECRETARY**

**DOUGLAS BRADBURY
AND TO:
SCOTT HAWKES
ALGOMA POWER INC.
1130 BERTIE STREET
P. O. BOX 1218
FORT ERIE ON L2A 5Y2**

**MICHAEL JANIGAN
VULNERABLE ENERGY CONSUMERS
COALITION
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**SHELLEY GRICE
VULNERABLE ENERGY
34 KING STREET EAST
SUITE 1102
TORONTO ON M5C 2X8**

Dear Sirs and Madam:

**Re: EB-2015-0051 - Algoma Power Inc.
– 2016 Electricity Distribution Rates**

**Re: Motion Re Costs
Our File No.: 12524-8**

Enclosed herewith, please find Motion Record of Algoma Coalition which document we are serving upon you pursuant to the Rules.

We look forward to the Board's response with respect to our motion re costs.

Yours very truly,
WISHART LAW FIRM LLP

Tim J. Harmar
per: JH

TIM J. HARMAR
Telephone Ext.: 233
Email: tharmar@wishartlaw.com

TJH:lh

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excellent solutions.

ONTARIO ENERGY BOARD

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 Algoma Power
Inc. for electricity distribution rates and other charges
effective January 1, 2016.

MOTION RECORD OF THE ALGOMA COALITION

Dated: October 27, 2015

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Barristers and Solicitors
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Counsel for the Algoma Coalition

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AND

TO: **ALGOMA POWER INC.**
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Scott Hawkes**

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Telephone: 905-994-3634
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AND

TO: **VULNERABLE ENERGY CONSUMERS COALITION**
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Toronto ON M4S 1T4

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AND

TO: **VULNERABLE ENERGY**
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ONTARIO ENERGY BOARD

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 Algoma Power Inc. for electricity distribution rates and other charges effective January 1, 2016.

NOTICE OF MOTION

Algoma Coalition will make a motion to the Ontario Energy Board at its offices at 2300 Yonge Street, Toronto, on a date and at a time to be fixed by the Board.

THE PROPOSED METHOD OF HEARING:

Algoma Coalition proposes that the motion be heard in writing.

THE MOTION IS FOR:

1. An order varying Procedural Order No. 1 dated October 7, 2015 such that Algoma Coalition is granted:
 - a. Eligibility for an award of costs;
 - b. An extension of two weeks from the date of the Board's decision in respect of this motion for Algoma Coalition to file written interrogatories with the Board and deliver same to Algoma Power Inc.; and
 - c. Corresponding extensions for all other filing deadlines set out therein.

THE GROUNDS OF THE MOTION:

1. On October 7, 2015 the Board issued Procedural Order No. 1 in which, *inter alia*, the Board determined that Algoma Coalition was not eligible to apply for an award of costs.

2. In making the above determination the Board cited section 3.05 (i) of *the Practice Direction on Cost Awards*.
3. Section 3.05 (i) came into effect with the revised Practice Direction the Board issued on March 19, 2012.
4. Section 3.05 (i) excludes “a municipality in Ontario, individually or in a group” from eligibility for a cost award.
5. The Board held that Algoma Coalition represents the interests of a group of municipalities and, therefore, was not eligible to apply for an award of costs.
6. No reason was provided for the above determination aside from the citation of section 3.05 (i) of the Practice Direction.
7. Algoma Coalition has intervened and been awarded costs in a number of Board proceedings.
8. Most recently, on May 5, 2015, the Board awarded Algoma Coalition costs in the amount of \$45,309.90 as an intervenor in EB-2014-0055.
9. The granting of cost eligibility is a matter within the Board’s discretion and when making such a determination, the Board has a responsibility to ensure that costs are granted in appropriate circumstances (those circumstances identified in section 3.03 of the Practice Direction) or special circumstances (in accordance with section 3.07 of the Practice Direction).
10. Algoma Coalition submits that the Board’s October 7, 2015 decision to exclude Algoma Coalition from eligibility for an award of costs was an arbitrary exercise of discretion inconsistent with its previous decisions on this issue.
11. Algoma Coalition further submits, notwithstanding the foregoing, that sections 3.04 and 3.06 apply so as to preclude the application of section 3.05 (i) given each of its individual members are customers of Algoma Power Inc.
12. Denying Algoma Coalition eligibility for cost awards denies access to justice and effective representation of local Northern Ontario interests that have historically been represented by, and are constituents of, Algoma Coalition.

13. Rule 40.01 of the Board's *Rules of Practice and Procedure*.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. Affidavit of Linda Hurdle sworn October 27, 2015; and
2. Such further and other evidence as counsel may advise and the Board may permit.

DATED: October 27, 2015

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Tim J. Harmar
LSUC#065530G

Counsel for Algoma Coalition

ONTARIO ENERGY BOARD

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 Algoma Power Inc. for electricity distribution rates and other charges effective January 1, 2016.

AFFIDAVIT OF LINDA HURDLE

I, LINDA HURDLE, of the City of Sault Ste. Marie, in the District of Algoma and Province of Ontario, make oath and say as follows:

- 1) I am the assistant to Mr. Tim Harmar and J. Paul R. Cassan, lawyers for the Algoma Coalition, and as such have knowledge of the matters hereinafter deposed to in this Affidavit. Unless I indicate to the contrary those facts are within my personal knowledge and are true. Where I have indicated that I have obtained the information from other sources I verily believe those facts to be true.
- 2) On October 7, 2015 the Board issued Procedural Order No. 1 in respect of this matter. In that Order the Board decided that, under section 3.05 (i) of the *Practice Direction on Cost Awards*, Algoma Coalition was not eligible to apply for an award of costs.
- 3) The expressed reason for the Boards decision to deny Algoma Coalition eligibility for an award of costs was that Algoma Coalition represents the interests of a group of municipalities.
- 4) Algoma Coalition's membership is comprised of a number of Northern Ontario municipalities each of which is a customer of Algoma Power Inc.
- 5) Algoma Coalition has been granted intervenor status in a number of Board

proceedings. These proceedings include the following:

- a) EB-2015-0051
 - b) EB-2014-0055
 - c) EB-2011-0140
 - d) EB-2009-0278
 - e) EB-2007-0647
 - f) EB-2007-0744
 - g) EB-2006-0087
 - h) EB-2005-0241
 - i) EB-2005-0020
- 6) As an intervenor, Algoma Coalition has always been granted eligibility for cost awards.
- 7) Most recently, on May 5, 2015, the Board awarded Algoma Coalition costs in the amount of \$45,309.90 as an intervenor in EB-2014-0055. A copy of this decision is attached as **Exhibit A**.
- 8) No reason, aside from a recitation of section 3.05 (i), was provided by the Board's arbitrary and inconsistent decision to deny Algoma Coalition eligibility for an award of costs in the present proceeding.
- 9) No objection was made by Algoma Power Inc.
- 10) Algoma Coalition brings a valuable perspective to proceedings as it, collectively, is the only voice that Northern Ontario municipalities and their constituent ratepayers have before the Board.
- 11) Such interests are distinct and often at odds with those of Southern Ontario municipalities and ratepayers whose interests are variously represented by VECC, Energy Probe and other like organizations.
- 12) None of Algoma Coalition's individual members possess the resources or expertise to individually advance their respective interests before the Board.
- 13) Denying Algoma Coalition eligibility for an award of costs effectively deprives

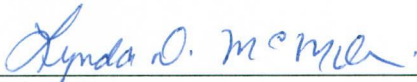
its individual members of access to justice and is contrary to the public interest in ensuring the valuable insights and unique perspectives of Northern Ontario municipalities are properly before the Board.

14) Under the terms of settlement in respect of EB-2014-0055 Algoma Coalition is the party primarily involved in the public stakeholder engagement process with Algoma Power Inc. Being a participant in Board proceedings is critical to Algoma Coalition's ability to effectively fulfill this role. As noted above, Algoma Coalition's continued participation in Board proceedings is entirely dependent on its eligibility for cost awards.

15) I make this affidavit for no improper purpose.

SWORN BEFORE ME)
at the City of Sault Ste. Marie)
in the District of Algoma,)
this 27 day of October, 2015)


LINDA HURDLE


A Commissioner, etc.

Lynda Diane McMillan, a Commissioner, etc.,
District of Algoma, for Wishart Law Firm LLP,
Barristers and Solicitors.
Expires September 21, 2017.

THIS IS EXHIBIT A TO THE AFFIDAVIT OF LINDA HURDLE
SWORN BEFORE ME THIS 27 DAY OF OCTOBER, 2015

Lynda D. McMillan

Lynda Diane McMillan, a Commissioner, etc.,
District of Algoma, for Wishart Law Firm LLP,
Barristers and Solicitors.
Expires September 21, 2017.

Ontario Energy Board

Commission de l'énergie de l'Ontario



EB-2014-0055

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 Algoma Power Inc. for an order approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2015.

BEFORE: Ken Quesnelle
Presiding Member and Vice Chair

Allison Duff
Member

DECISION AND ORDER ON COST AWARDS
May 5, 2015

Background

Algoma Power Inc. (Algoma Power) filed a complete cost of service application (the Application) with the Ontario Energy Board (the OEB) on May 12, 2014 under section 78 of the *Ontario Energy Board Act*, 1998, seeking approval for changes to the rates that Algoma Power charges for electricity distribution, to be effective January 1, 2015.

The OEB granted the Algoma Coalition, Energy Probe Research Foundation (Energy Probe) and the Vulnerable Energy Consumers Coalition (VECC) intervenor status and cost award eligibility to participate in the proceeding to hear the Application. The OEB established the process for intervenors to file their cost claims, for Algoma Power to object to the claims and for intervenors to respond to any objections raised by

Algoma Power. The OEB also established a timetable for filing cost claims after the issuance of the Final Rate Order in the proceeding.

The OEB received cost claims from the Algoma Coalition, Energy Probe and VECC.

On February 13, 2015, Algoma Power filed a letter with the OEB indicating that it had no issues with VECC's cost claim. Algoma Power's only objection to Energy Probe's cost claim was the cost of two consultants concurrently attending the settlement conference. Algoma Power had a number of concerns with the cost claim of the Algoma Coalition:

- meal expenses should conform with the *Ontario Government's Travel, Meal and Hospitality Expenses Directive* (the Directive);
- transportation expenses and details of costs including HST should be provided according to the OEB's *Practice Direction on Cost Awards*;
- accommodation costs were much higher than those of Energy Probe's;
- legal/consultant fees of \$37,426.50 were high compared to Energy Probe's and VECC's fees of \$24,576.50 and \$26,813 respectively.

Algoma Power indicated that both Energy Probe and VECC scrutinized a much broader range of issues in more detail than the Algoma Coalition. As a result, Algoma Power submitted that the Algoma Coalition's fees should be reduced to \$26,813, the next highest cost claim filed in the proceeding.

The Algoma Coalition responded to Algoma Power's comments acknowledging that some meal expenses were incorrect, yet maintained that the taxi expenses were in accordance with the Directive, the HST calculations were correct and accommodations were booked responsibly.

The Algoma Coalition disputed Algoma Power's comments with respect to legal consultant fees. The Algoma Coalition argued that Algoma Power had failed to supply any material supporting its submission that the Algoma Coalition's claim should be reduced to \$26,813. Algoma Coalition submitted that suggesting its cost claim be reduced to the higher of VECC and Energy Probe's cost claims was outside the Directive. If the OEB were to endorse this practice, it would necessitate a high degree of coordination between independent parties to compare the number of hours spent during a proceeding. In addition, as each party pursues unique mandates, it would be

inappropriate, impractical and the expectation would interfere with the ability of parties to independently pursue their own goals before the OEB.

The Algoma Coalition relied on the proposition expressed by the Ontario Superior Court of Justice in *Basdeo (Litigation Guardian of) v University Health Network*¹ to support its submissions. The Ontario Superior Court of Justice indicated that when assessing fees, the courts should not second-guess the time spent by counsel in preparation or conduct of a trial unless the total is grossly excessive or the matter has been "over lawyered". The Algoma Coalition noted that the quantum of its costs was not grossly excessive nor had its intervention been over lawyered. Algoma Coalition indicated that it elected to have Mr. Harmar (a junior associate) work under Mr. Cassan to keep costs as low as possible in the circumstances.

Board Findings

The Board has reviewed the cost claims filed by VECC, Energy Probe and the Algoma Coalition.

The Board reduces VECC's claim by \$10.05 to comply with the government's *Travel, Meal and Hospitality Expenses Directive* and to correct a calculation error.

The Board reduces Energy Probe's claim by \$694.91 as it is the Board's practice to enable one participant per intervenor to claim costs for attending a settlement conference.

The Board has reviewed the Algoma Coalition's cost claim in detail. The Board appreciates that the Algoma Coalition retained two lawyers of different seniority in order to reduce costs. The Board does not find that the Algoma Coalition's intervention and participation was "over lawyered". However, in retaining two lawyers and an expert consultant, case management expenses were high resulting from the number of meetings and conference calls to coordinate activities and provide updates among the party. The complexity of the Algoma Coalition's case management was a result of its own organization structure. The Board is not convinced the Algoma Coalition's case management costs were correlated or driven by the Application, issues or proceeding

¹ *Basdeo (Litigation Guardian of) v. University Health Network*, [2002] O.J. No. 263 (S.C.J.)

alone. The Board finds it appropriate to reduce the Algoma Coalition's case management claim by one third, thereby reducing the claim from 30.75 hours to 20.50 hours.

In addition, the Board reduces the claim of Mr. Harmar by 6 hours at \$165/hour for travel to and from the OEB hearing on October 19 and 21, 2014, based on the affidavit evidence as filed. The claim of Mr. Harmar also requires a reduction of \$19.62 for meal charges to comply with the Directive.

The Board reduces the cost claim of Mr. Cassan from \$300 to \$290 per hour or \$403.97 to correct the cost award tariff and by \$403.01 to comply with the Directive.

The Board reduces the cost claim of Mr. Reid by \$1,065.41 from a total of \$4,330.39 to \$3,264.99. Of the reduction, \$673.39 was related to the use of a mileage rate of \$0.55 per kilometer rather than the \$0.41 rate required by the Directive. An additional \$277.73 was disallowed relating to hotel expenses as a 5% markup and meal charges were included in the hotel claim. There were smaller disallowances of \$62.33 for meals, \$36.46 for air travel and \$18.68 for taxi travel to adjust those costs to conform to the Directive.

With the exceptions noted above, 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 adjusted claims of VECC, Energy Probe and the Algoma Coalition are reasonable and that each of these claims shall be reimbursed by Algoma Power.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, Algoma Power shall immediately pay the following amounts to the specified intervenors for their costs:

- The Algoma Coalition \$45,309.90;
- Energy Probe Research Foundation \$26,462.22; and
- Vulnerable Energy Consumers Coalition \$28,638.52.

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

DATED at Toronto, May 5, 2015

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
OEB Secretary

EB-2015-0051

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 Algoma Power Inc. for electricity distribution rates and other
charges effective January 1, 2016.

ONTARIO ENERGY BOARD

MOTION RECORD
OF THE ALGOMA COALITION

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