



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

DECISION AND ORDER ON COST AWARDS

EB-2022-0016

BLUEWATER POWER DISTRIBUTION CORPORATION

Application for electricity distribution rates beginning May 1, 2023

BEFORE: **Robert Dodds**
Presiding Commissioner

Fred Cass
Commissioner

Patrick Moran
Commissioner

June 15, 2023

OVERVIEW

Bluewater Power Distribution Corporation (Bluewater Power) filed a cost of service application with the Ontario Energy Board (OEB) on October 24, 2022 under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the rates that Bluewater Power charges for electricity distribution, beginning May 1, 2023.

The OEB granted the Association of Major Power Consumers in Ontario (AMPCO), Consumers Council of Canada (CCC), Coalition of Concerned Manufacturers and Business of Canada (CCMBC), School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC) intervenor status and cost award eligibility.

On April 27, 2023, the OEB issued its Decision and Rate Order in which it set out the process for cost claims.

The OEB received cost claims from AMPCO, CCC, CCMBC, SEC and VECC.

Findings

The OEB has reviewed the claims filed to ensure that they are compliant with the OEB's *Practice Direction on Cost Awards*.

The OEB approves all cost claims as filed except for that of SEC. SEC's total cost claim is reduced from \$44,859.87 to \$38,147.67, inclusive of HST. The OEB notes that, even after this reduction to SEC's costs, the cost award to SEC will still be by far the largest among all intervenors in this case. The OEB believes that the magnitude of this cost award is appropriate in view of the role played by SEC in the proceeding.

Procedural Order No. 1 issued on December 12, 2022 dealt with cost eligibility of intervenors. The OEB stated in Procedural Order No. 1 that:

Cost eligible intervenors should be aware that the OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party unless a compelling reason is provided when cost claims are filed.

After Bluewater Power received cost claims from intervenors that had participated in the application, it filed an objection with the OEB that took issue with the cost claim submitted by SEC. In particular, Bluewater Power noted that SEC claimed time for attendance of two participants at the settlement conference. Bluewater Power referred to the statement above by the OEB in Procedural Order No. 1 and it requested that the

OEB review the cost claim for SEC in regard to the number of hours submitted for the settlement conference.

SEC responded to the objection by Bluewater Power. SEC stated that its consultant Jane Scott “took the lead in the ADR on behalf of all parties” and that SEC counsel Jay Shepherd attended for most of the time, but had a primary focus on interaction with the client, as well as being the “key person” on certain issues. SEC expressed its belief that, in large part, it was because of the extra effort of Ms. Scott and Mr. Shepherd, and the ability to draw on the resource of SEC in this case, that a settlement was reached. SEC argued that this is exactly the sort of situation in which there is a “compelling reason” to allow time spent by two persons.

The OEB acknowledges the value that SEC brought to the settlement process through its counsel and consultant. This value is recognized in Bluewater Power’s submissions on the cost claims, in which Bluewater Power makes no objection to SEC’s cost claims for time spent by both SEC’s counsel and consultant on settlement conference preparation (13.9 hours total) and preparation of the settlement proposal (19.5 hours total). However, as far the settlement conference itself is concerned, the question is why two representatives of SEC needed to be in attendance for much of the settlement conference (20.5 hours claimed for attendance for Ms. Scott and 18 hours for attendance by Mr. Shepherd).

SEC has pointed out that its consultant took the lead at the settlement conference on behalf of all parties and that its counsel was responsible for interaction with the client, as well as being the key person on certain issues, but there is nothing in this that explains why the SEC representative responsible for client interaction, and for certain issues, could not have taken on the entirety of SEC’s role at the settlement conference. In other words, no reason has been provided to support a conclusion that, in the circumstances of this case, a single representative of an intervenor at the settlement conference could not lead the conference on behalf of all parties, while also interacting with the intervenor (the client) and taking a particular interest in certain issues. SEC’s submissions about the respective roles of its two representatives describe a division of responsibilities, but do not address why these responsibilities could not have been fulfilled by one person in attendance at the settlement conference. The OEB finds accordingly that SEC has not provided a compelling reason for the OEB to allow recovery of costs of attendance at the settlement conference by more than one SEC representative.

The OEB therefore allows SEC’s claim for the attendance of one of its representatives throughout the settlement conference, that is, the claim for 20.5 hours of time spent at

the settlement conference by Ms. Scott, but does not allow the claim for the attendance of a second SEC representative at most of the settlement conference, that is, the claim for 18 hours of time spent at the settlement conference by Mr. Shepherd.

THE ONTARIO ENERGY BOARD ORDERS THAT:

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

• Association of Major Power Consumers in Ontario	\$22,280.81
• Consumers Council of Canada	\$19,577.25
• Coalition of Concerned Manufacturers and Business of Canada	\$17,712.75
• School Energy Coalition	\$38,147.67
• Vulnerable Energy Consumers Coalition	\$25,382.14

DATED at Toronto June 15, 2023

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar