



Ontario
Energy
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de l'énergie
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DECISION AND ORDER ON COST AWARDS

EB-2022-0028

EPCOR ELECTRICITY DISTRIBUTION ONTARIO INC.

**Application for electricity distribution rates and other charges beginning
January 1, 2023**

BEFORE: Patrick Moran
Presiding Commissioner

Robert Dodds
Commissioner

October 12, 2023

OVERVIEW

EPCOR Electricity Distribution Ontario Inc. (EEDO) filed a cost of service application on May 27, 2022, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the rates it charges for electricity distribution, beginning January 1, 2023. EEDO subsequently amended its application seeking a new effective date of October 1, 2023, in keeping with the commitment¹ it made when acquiring the utility in 2018.

The Ontario Energy Board (OEB) granted Environmental Defence Canada Inc. (ED), School Energy Coalition (SEC), Small Business Utility Alliance (SBUA) and Vulnerable Energy Consumers Coalition (VECC) intervenor status and cost award eligibility.

On June 15, 2023, the OEB issued its Decision and Order, which among other matters, set out the cost award process.

The OEB received cost claims from ED, SEC, SBUA and VECC.

Cost Claim Objections

On August 16, 2023, EEDO filed a submission with the OEB. EEDO had no objections to ED's cost claim, but it did object to certain portions of the cost claims submitted by SEC, VECC and SBUA. In SEC's cost claim, EEDO notes that certain claimed time by SEC's consultant seemed either redundant or disproportionate to the time spent on specific tasks as compared to other intervenors and proposed the following reductions:

- A reduction of 5 hours for the review of interrogatory responses to align with other intervenors' claimed time of around 3 hours.
- A reduction of 6 hours (75%) for settlement conference preparation, which is counsel's primary focus of responsibility and for which the total time would be consistent to a similar level of effort by VECC's consultants.
- A reduction of 5 hours (75%) for oral hearing preparation as this is counsel's primary focus of responsibility, and consistent to a similar level of effort by VECC's consultants.

EEDO proposes that the claimed time by SEC's consultant should be reduced by a total of 16 hours (\$5,280.00 plus HST).

¹ The MAADs Decision and Order (EB-2017-0373 and EB-2017-0374) required EEDO to maintain existing rates for customers during a five-year period effective October 1, 2018.

In respect of VECC's cost claim, EEDO submits the time allocated to preparing interrogatories (19 hours, 56 interrogatories) appears excessive and disproportionate to SEC (9.8 hours, 49 interrogatories), which it submits would be a comparable intervenor. EEDO proposes the preparation of interrogatories be reduced by 9 hours (\$2,970.00.00 plus HST).

EEDO notes that SBUA did not actively participate in the settlement conference and submits their limited attendance did not contribute to a meaningful or helpful resolution of the issues at discussion. EEDO objects to SBUA's counsel's and the consultant's claimed time related to the settlement conference. EEDO also finds the consultant's claimed time of 2.17 hours to review the OEB's Decision and Order is disproportionate when compared to other intervenors. EEDO proposes a total reduction of \$1,666.50, which includes:

- A reduction of counsel's claimed time of 0.33 hours and the consultant's claimed time of 6.17 hours (\$1,144.60 plus HST) for the settlement conference.
- A reduction to 0.6 hours (\$266.90 plus HST) for the consultant's review of the OEB's decision.
- A reduction of 1.5 hours (\$255.00 plus HST) for the consultant's claimed time to prepare SBUA's cost claim.

Responses to Cost Claim Objections

SEC filed its reply submission to EEDO's objection on August 18, 2023. SEC notes various tasks were divided amongst counsel and the consultant to create efficiencies and disagrees that certain tasks were duplicative. SEC also submits that comparing time spent on certain activities against other intervenors is a poor indication of the reasonableness of a cost claim; and that SEC and VECC often engage in all issues in an application whereas ED and SBUA had a narrower scope in the proceeding. In response to EEDO's proposed reduction to the settlement conference and oral hearing, SEC submits its consultant assisted with preparing summaries of information, analysis, and recommendations. SEC submits that, in preparing for the oral hearing, its consultant assisted by determining which areas needed to be cross-examined and how to approach the various issues.

SBUA filed its reply submission to EEDO's objection on August 25, 2023. SBUA maintains that it participated meaningfully and responsibly. With respect to EEDO's proposal to deny claimed costs for its participation in the settlement conference, SBUA maintains it participated to the extent it could. Counsel was overseas in another hearing that was scheduled before the settlement conference. SBUA's consultant attended the

first day of the settlement conference and communicated the situation with the facilitator. SBUA further provides clarification on EEDO's proposed reductions:

- Counsel's time of 0.33 hours for the settlement conference relates to email exchanges with respect to the settlement proposal.
- Consultant's time at the settlement conference should be a total of 3.5 hours, not 6.17 hours.
- Consultant's claimed time for reviewing the OEB's decision and order is 0.67 hours, not 2.17 hours.
- Consultant's claimed time for preparing the cost claim represents a real cost to counsel and normally recognized as a standard practice before the courts.

VECC filed its reply submission to EEDO's objection on August 26, 2023. VECC agrees with SEC's view that comparing time spent on certain tasks is a poor indicator of the reasonableness of a cost claim and that each intervenor may have different practices for developing their work. VECC submits that the number of information requests by each intervenor is not a good way to determine the time involved in preparing the information requests since some intervenors may involve a detailed review of complex models or spreadsheets while others may rely on historical or other analytical techniques. VECC further notes that its time spent reviewing EEDO's second draft rate order was completed after the closing for filing cost claims, resulting in being unable to claim the time.

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 considered EEDO's objections when assessing the cost claims and considered whether they were reasonable in the context of this proceeding, and the areas of the intervention by each intervenor.

The OEB accepts the submissions from VECC and SEC in response to EEDO's objections regarding the appropriateness of their participation in the proceeding. VECC and SEC fully participated on all issues raised by EEDO's application and their cost claims are proportionate to that effort and in line with their participation in similar proceedings. The OEB is also satisfied that SEC divided responsibilities between its counsel and consultant appropriately.

The OEB is concerned about the scope of SBUA's involvement in the proceeding. While SEC and VECC provided useful perspective that assisted the OEB's decision making

process, this was not the case regarding SBUA's participation. SBUA also included a claim for time used to prepare its cost claim which is not the OEB's practice. The OEB reduces SBUA's claim by \$3000.

Although the OEB has not accepted much of the reductions in cost claims recommended by EEDO, the OEB appreciates the time and effort spent by EEDO in analyzing the cost claims and its recommendations for reductions which would ultimately benefit the customers.

EEDO shall reimburse the claims of ED, SEC, and VECC, as filed, and SBUA's claim as reduced.

THE ONTARIO ENERGY BOARD ORDERS THAT:

Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, EEDO shall immediately pay the following amounts to the intervenors for their costs:

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| • Environmental Defence Canada Inc. | \$9,991.46 |
| • School Energy Coalition | \$44,675.70 |
| • Small Business Utility Alliance | \$4,711.25 |
| • Vulnerable Energy Consumers Coalition | \$33,528.45 |

DATED at Toronto October 12, 2023

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar