



EB-2007-0791

IN THE MATTER OF sections 25.20 and 25.21 of the Electricity Act, 1998;

AND IN THE MATTER OF a Submission by the Ontario Power Authority to the Ontario Energy Board for the review of its proposed expenditure and revenue requirements and the fees which it proposes to charge for the year 2008.

AND IN THE MATTER OF an award of costs pursuant to section 30 of the OEB Act.

BEFORE: Pamela Nowina
Presiding Member and Vice Chair

Paul Vlahos
Member

DECISION AND ORDER ON COST AWARDS

Pursuant to subsection 25.21(2) of the *Electricity Act, 1998*, on November 2, 2007 OPA filed with the Board its Submission for Review seeking approval of its proposed 2008 expenditure and revenue requirement and fees.

Following a public hearing, on May 15, 2008 the Board issued its Decision and Order. In the Decision and Order the Board directed eligible intervenors wishing to seek cost awards to file their cost submissions in accordance with the Practice Direction on Cost Awards with the Board Secretary and with the OPA within 15 days of the date of the Decision and Order. The OPA was permitted to make submissions regarding the cost claims within 30 days of the Decision and Order and any affected party could reply within 45 days of the Decision and Order.

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The Board received cost claims from Energy Probe, Pollution Probe, Vulnerable Energy Consumers Coalition ("VECC"), and jointly the Green Energy Coalition, the Pembina Foundation and the Sustainable Energy Association ("GEC"). The hours incurred of each party and the total claims are shown in the table below.

Intervenor	Hours	Fees Claim (excl. disbursements and GST)	Disbursements and GST	Total Cost Claim
Energy Probe	63.25	\$ 16,925.31	\$ 134.58	\$ 17,295.64
Pollution Probe	54.05	\$ 7,818.54	\$ 615.24	\$ 8,433.95
VECC	38.75	\$ 12,082.19	0	\$ 12,082.19
GEC	87.55	\$ 27,511.50	\$ 4,353.05	\$ 31,864.55

The OPA did not file any comments on the cost claims.

Board Findings

The Board finds the costs claimed by Energy Probe and Pollution Probe to be reasonable and awards these parties 100% of their costs.

With respect to the costs claimed by GEC and VECC, the Board notes its findings in its May 15, 2008 Decision and Order with respect to some of the issues addressed by these parties.

The Board stated:

Cross-examination and argument by GEC and VECC was almost entirely on CDM issues. These intervenors did not take issue with

the OPA's proposed organizational budget. Their participation had little to do with the OPA's organizational budget as such; rather their concerns had to do with the CDM programs themselves. The submissions by GEC and VECC represent almost entirely recommendations about how the OPA should go about fulfilling its mandate on CDM matters and proposed directions the Board should issue to the OPA on CDM.

The Board also stated:

More specifically, the Board's concerns with GEC's submissions are twofold. First, the issues that GEC raises are generally contained in the issues that the Board will review as part of the IPSP proceeding. Examples are the test of economic prudence for perhaps exceeding the stated goals, the mix of conservation types and programs, and implementation schedule. There will be an evidentiary record in that proceeding to consider those issues. It would not therefore be appropriate for the Board to comment specifically or generally on GEC's submissions in this proceeding.

Second, the Board is concerned with the nature of GEC's submissions in a fees proceeding. The Board's expectations regarding the scope of the fees proceeding were made clear throughout the proceeding.

For example, in its decision on issues, the Board stated:

"...this is an OPA fees case and the overall purpose of this hearing is to determine if the revenue requirement and fees proposed by the OPA are reasonable. In order to determine if the fees are reasonable, of course, some examination of the costs that make up this fee may be necessary. The Board does not intend, however, to entertain a debate concerning specific programs that the OPA should consider to meet a MWh goal or target."

In the preamble of its written argument, GEC notes as follows:

"We limit our comments to matters where we submit that the Board's guidance will help ensure that OPA's operating budget is applied to the necessary research and analysis to support its broader mission and ensure that it functions cost-effectively; that OPA is managing its internal resources in conformity with the stated

mission and the government's priorities; and that OPA is respecting the applicable regulatory and accountability structures."

The Board's role in a fees proceeding is to assess whether the proposed organizational budget is reasonable. Despite the Board's caution, and GEC's prologue, its submissions were on how the OPA should go about fulfilling its CDM mandate on the program side, and no link was made to whether the proposed organizational budget was reasonable or unreasonable.

The Board further stated:

The same general conclusions above regarding the Board's role in the OPA's CDM programs and activities also apply to VECC's requests regarding proportional spending for low income customers and the development of targets and timeframes. VECC did set out the reasons why it feels it cannot provide assistance on the revenue requirement. As much as these reasons may be legitimate, the parameters of the OPA's fees review are not set by the Board; they are rooted in legislation.

In addition, the Board stated:

The Board has already dealt with GEC's submissions regarding the pursuit of all economic and cost-effective CDM and decided that these are not matters for the 2008 fees proceeding. Accordingly, this [avoided costs] issue is also beyond the scope of this fees proceeding.

Clearly, by pursuing the issues they pursued, GEC and VECC were of little assistance to the Board in deciding the issues that it had to decide in this proceeding.

The Board decided not to reduce VECC's cost award on the reason that its claimed hours are substantially below those of the other intervenors. In the case of GEC, the claimed hours are substantially higher compared to the other intervenors, notably more than double the hours claimed by VECC. On the reason that GEC was not of greater assistance to the Board than VECC, the Board concluded that the cost award for GEC should be reduced to reflect the same hours as VECC.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, the Ontario Power Authority shall immediately pay:
 - \$ 17,295.64 to Energy Probe;
 - \$ 8,433.95 to Pollution Probe;
 - \$ 12,082.19 to Vulnerable Energy Consumers Coalition; and
 - \$15,763.03 to Green Energy Coalition, the Pembina Foundation and the Sustainable Energy Association, being the addition of \$12,176.71 for fees $((\$27,511.50/87.55) \times 38.75)$, \$608.84 for GST $(\$12,176.71 \times 0.05)$, and \$2,977.48 for disbursements
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, the Ontario Power Authority shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, September 25, 2008

ONTARIO ENERGY BOARD

Original signed by

John Pickernell
Assistant Board Secretary