



EB-2008-0235

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 London Hydro Inc. for an order approving or fixing just and reasonable rates and other charges for the distribution of electricity to be effective May 1, 2009.

BEFORE: Cynthia Chaplin
Presiding Member

Paul Sommerville
Member

DECISION AND ORDER ON COST AWARDS

London Hydro Inc. ("London") filed an application (the "Application") with the Ontario Energy Board (the "Board") on December 8, 2008. The Application was filed under section 78 of the *Ontario Energy Board Act, 1998*, S.O 1998, c. 15 (Sched. B) (the "Act"), seeking approval for changes to the rates that it charges for electricity distribution to be effective May 1, 2009. The Board assigned the Application file number EB-2008-0235.

The Consumers Coalition of Canada ("CCC"); Energy Probe Research Foundation ("Energy Probe"); London Property Management Association ("LPMA"); the School Energy Coalition ("SEC") and the Vulnerable Energy Consumers' Coalition ("VECC") were each granted intervenor status and were each found to be eligible to apply for an award of costs.

The Board issued its Decision and Order on the Application on August 21, 2009, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by London.

The Board received cost claims from CCC, Energy Probe, LPMA, SEC and VECC.

On September 24, 2009, London raised objections to CCC's cost claim on the grounds that the costs of the submission are significantly in excess of those received from other intervenors in both hours charged and costs claimed. In support of its concern, London provided a comparison of the average intervenor hours and costs documented in the cost submissions received, and an analysis of a series of cost versus work load measurements to determine the appropriateness of charges received. London submitted that CCC's cost claim should be significantly reduced to a level that is more in line with the cost claims submitted by the other four intervenors.

On October 6, 2009, CCC replied to London's letter, and stated that London's comparison on the number of hours spent, the number of interrogatories filed and the number of pages in written argument is both artificial and unfair. CCC advised that it made a policy decision to limit the number of LDC rate applications in which it intervenes. As a result, CCC's counsel and consultant review all of the prefiled evidence in an application to determine whether components of the application warrant CCC's intervention. This approach may enlarge or reduce the scope of CCC's interventions.

Board Findings

The Board has reviewed the cost claims filed by CCC, Energy Probe, LPMA, SEC and VECC. The Board finds that the claims of Energy Probe, LPMA, SEC and VECC are reasonable and will be awarded in full.

London has raised concerns with respect to CCC's cost claim, and CCC has responded to those concerns. CCC takes the position that comparisons of cost claims against measures such as number of interrogatories are artificial and invidious. The Board does not agree. While comparisons are not a perfect analytical tool, they can legitimately be used as an indicator of reasonableness. The Board has done so in a number of cost award decisions.

The claims of LPMA, SEC and VECC are all reasonably close. The Board concludes that this level of costs (in the range of \$11,000 to \$15,000) represents a reasonable level for this application. The Board of course does not only look at the level of the average claim, but also considers the content of the intervention and the level of

contribution to the proceeding. In this proceeding, CCC did not provide a level of involvement or contribution which would warrant the wide disparity in the level of the claims. The Board concludes that CCC's cost claim is unreasonable.

CCC does have an excellent record of contribution before the Board. In addition, the Board understands that CCC has not been active in as many cost-of-service rebasing applications as the other intervenors and therefore can accept that some additional level of effort might be required. As a result, the Board concludes that it would not be appropriate to reduce CCC's claim to the level of the average of SEC, VECC and LPMA. However, CCC has been involved in a number of these cases, so the process and issues are certainly familiar to CCC. As a result, the Board would expect CCC's analysis of the evidence to be efficient. The Board concludes that CCC's cost claim will be reduced by \$3500.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, London shall immediately pay:

- Consumers Coalition of Canada \$20,549.46;
- Energy Probe Research Foundation \$ 8,643.57;
- London Property Management Association \$15,156.79;
- School Energy Coalition \$11,355.80; and
- Vulnerable Energy Consumers' Coalition \$11,838.76.

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

DATED at Toronto, November 18, 2009

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary