



PUBLIC INTEREST ADVOCACY CENTRE

LE CENTRE POUR LA DEFENSE DE L'INTERET PUBLIC

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July 10, 2013

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Toronto, ON
M4P 1E4

**Re: Coat Award Decision - July 5, 2013
Toronto Hydro- Electric System Limited EB 2012-0064**

Dear Ms. Walli:

I am counsel for the Vulnerable Energy Consumers Coalition (VECC) in the above-noted matter. We are in receipt of the Decision of the Board of July 5, 2013 with respect to the award of costs following the conclusion of the proceeding. We would note that the Decision puts forward or confirms a practice that provides for the award of costs to only one representative of an intervenor for attendance at an Alternate Dispute Resolution (ADR) conference in a proceeding. We do not seek an appeal of this Decision but ask that the rule or practice be reconsidered, and slightly amended on a going forward basis.

In general, VECC supports the limitation of ADR attendance funding to one representative. Most of the evidence has been ascertained at this point and a fair amount of the proceeding consists of a discussion of the parties' positions and waiting for responses to offers. However, frequently occasions arise in an ADR where the presence of a technical consultant or expert witness is necessary to assist in the process of explaining a position or advancing a settlement. Legal counsel for an intervenor is generally the participating ADR representative as counsel usually has the instructions from the client and the representation and negotiation of a settlement most often engages legal counsel. No matter how well briefed counsel may be, the nature of most regulatory proceedings is such that more technical input is necessary for some matters under discussion at the ADR. This assistance not only aids the intervenor but also advances the prospects of settlement.

It is not realistic to simply suggest that such assistance be rendered without recompense, or the consultant stands by while there is a game of musical chairs played to complete the ADR discussion. The strict observance of the funding rule as set out in the Decision is likely to have adverse consequences on the progress of an ADR, and, at the very least, prolong the settlement conference while advice is obtained or the consultant is summoned. As the avoidance of a full

hearing is a principal cost benefit of the ADR process, we believe it is best not to subvert the same through the application of an inflexible rule.

VECC would suggest that an additional representative be funded for ADR attendance for up to one third of the attendance time of the main intervenor ADR participant. Cost control can be obtained without forfeiting the opportunity for ADR discussions to have access to needed assistance from technical consultants when required. It is to be noted that the regulated company will frequently attend with a retinue of staff thought necessary to deal with the issues arising at the ADR. We believe that this modest amendment to the rule or practice will be ultimately be more cost effective than strict adherence to the one representative rule.

Thank you.

Yours truly,



Michael Janigan
Counsel for VECC

cc: All parties – via email