



EB-2011-0090  
EB-2011-0091

**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 Ontario Power Generation Inc. pursuant to section 78.1 of the *Ontario Energy Board Act, 1998* for an Order or Orders determining payment amounts for the output of certain of its generating facilities;

**AND IN THE MATTER OF** a motion by Ontario Power Generation Inc. pursuant to Rule 42 of the Ontario Energy Board's *Rules of Practice and Procedure* for an order or orders to vary the Decision with Reasons EB-2010-0008 dated March 10, 2011;

**AND IN THE MATTER OF** a motion by the School Energy Coalition pursuant to Rule 42 of the Ontario Energy Board's *Rules of Practice and Procedure* for an order or orders to vary the Decision with Reasons EB-2010-0008 dated March 10, 2011:

**AND IN THE MATTER OF** a motion by the School Energy Coalition an order relating to certain cost award matters.

**BEFORE:** Paul Sommerville  
Presiding Member

Cathy Spoel  
Member

Karen Taylor  
Member

**DECISION ON MOTION**

## Background

On March 30, 2011, the School Energy Coalition (“SEC”) filed a motion to review a component of the Board’s Ontario Power Generation (“OPG”) payments decision (EB-2010-0008) with respect to certain tax determinations (the “Review Motion”). The Board assigned file no. EB-2011-0091 to the Review Motion.

On May 4, 2011, SEC filed a motion seeking an order from the Board declaring that no party to the EB-2011-0091 proceeding, other than OPG, shall have responsibility for the payment of costs of any other party (the “Costs Motion”). Absent such an order, SEC seeks permission from the Board to withdraw its Review Motion.

The Notice of Motion points to two recent Board decisions (EB-2011-0053 and EB-2011-0011) that raised the possibility that, in appropriate circumstances, the Board would consider ordering costs against a moving party if the motion was ultimately found to be without merit. SEC expresses concern that if it were ordered to pay other parties’ costs on the Review Motion, this would be a very onerous burden for it to bear.

## Decision

Pursuant to Rule 45.01 of the *Rules of Practice and Procedure*, the Costs Motion is hereby dismissed without further process. The Cost Motion is a component of the Review Motion, and therefore falls under the provisions of Rule 45.01.

The Board’s power to make orders with respect to costs derives from section 30 of the *Ontario Energy Board Act, 1998*. Subsection 30(2)(a) states: “The Board may make an interim or final order that provides by whom and to whom costs are to be paid.” Rule 2.01 of the Board’s *Practice Direction on Cost Awards* provides: “The Board may order one or all of the following: (a) by whom and to whom costs are to be paid; (d) costs against a party where the intervention is, in the opinion of the Board, frivolous or vexatious [...]”.

Although the Board has expressed concern in two recent decisions about the merits of certain motions and highlighted the fact that moving parties may be at risk to pay other parties’ costs where their motions are without merit, this is not a

new “policy” as described in the Costs Motion. The Board has always had the ability to order costs from any party to any other party.

The Board is not prepared, or even able, to assure any party at the outset of a proceeding that it will not have to pay the costs of other parties. As noted in the EB-2011-0053 decision, costs will be payable from an intervenor to an applicant only on rare occasions.

The Costs Motion is dismissed without costs to any party. If SEC wishes to withdraw the Review Motion, it may do so on a without costs basis.

**ISSUED** at Toronto, May 6, 2011

**ONTARIO ENERGY BOARD**

*Original signed by*

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Paul Sommerville  
Presiding Member

*Original signed by*

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Cathy Spoel  
Member

*Original signed by*

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Karen Taylor  
Member