



EB-2010-0131

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 Horizon
Utilities Corporation for an order approving just and
reasonable rates and other charges for electricity
distribution to be effective January 1, 2011.

BEFORE: Marika Hare
Presiding Member

Cathy Spoel
Member

Karen Taylor
Member

DECISION AND ORDER ON COST AWARDS

Background

Horizon Utilities Corporation (“Horizon”) filed an application (the “Application”) with the Ontario Energy Board (the “Board”) on August 27, 2010 under section 78 of the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15*, seeking approval for changes to the rates that Horizon charges for electricity distribution, to be effective January 1, 2011. The Board assigned File Number EB-2010-0131 to the application.

The Board issued a Notice of Application and Hearing dated September 20, 2010. Energy Probe Research Foundation (“Energy Probe”), School Energy Coalition (“SEC”)

and Vulnerable Energy Consumers Coalition (“VECC”) applied for intervenor status and cost eligibility. PowerStream Inc. also applied for intervenor status but did not seek cost eligibility. The Consumers Council of Canada (“CCC”) filed a late letter of intervention. The Board also received a late intervention request from the Association of Major Power Consumers of Ontario (“AMPCO”) on December 17, 2010, subsequent to the issuance of the Decision on the Preliminary Issue of Early Rebasing and Procedural Order No. 4. The Board allowed all requests for intervention and cost eligibility for cost awards for those who requested it.

The Board issued its Decision and Order on July 7, 2011, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by Horizon.

CCC filed its cost claim by the deadline specified in the Decision and Order. The Board received Energy Probe’s, VECC’s and SEC’s cost claims on August 2, 2011, one day late, and AMPCO’s cost claim was received on August 4, 2011. All cost claims were considered by the Board notwithstanding the late filings.

On August 8, 2011, Horizon filed a letter with the Board noting that it has no issues with the cost claims of CCC, Energy Probe and VECC. However, Horizon did raise concerns with the cost claims of AMPCO and SEC.

With respect to SEC’s cost claims, Horizon submitted that SEC had repeated time entries on at least two occasions and that SEC’s cost claim should be reduced by \$1,023 plus applicable tax. On August 8, 2011, SEC confirmed that the items were in error and submitted a corrected cost claim.

Horizon raised concerns with AMPCO’s cost claim on the grounds that it was not until after the release of the Board’s Decision on the Preliminary Issue (Issued on December 15, 2010) that AMPCO filed a request for late intervention status. Horizon stated that given the nature and timing of the AMPCO intervention, it seemed unreasonable that the costs being claimed by AMPCO were greater than the costs claimed by VECC. The total costs claimed by AMPCO are \$49,362.58, while those of VECC are \$48,644.00. Horizon stated that VECC intervened in this proceeding in September 2010, and actively participated in all stages of the proceeding, commencing with the Preliminary Issue. Horizon argued that AMPCO’s cost claim should be reduced and suggested that a reasonable reduction would be a decrease of one third of the amount claimed, which would reduce the AMPCO claim by \$16,410 to \$32,820 plus tax.

On August 15, 2011, AMPCO commented that Horizon's submission was unfair, unjustified and unprincipled. AMPCO noted that, in its view, the superficial comparison of AMPCO's costs to those of other intervenors ignored the relative importance of this hearing to Horizon's large use customers, who are also represented by AMPCO. Further, AMPCO noted that these large use customers are significantly impacted by the outcome of this Application and in fact, Horizon's own bill impact analysis showed that an average increase to a large user as a result of the decision of the Board in this matter was over 8 percent per annum. For one AMPCO member, the effects of the Board's decision meant an annual energy cost impact of over half a million dollars.

Board Findings

While the Board notes that this proceeding included several procedural steps in the consideration of complex issues arising from the factors identified by the Board in its Concluding Remarks in its July 7, 2011 Decision and Order, as well as the time spent on the Preliminary Issue at the outset of this proceeding, the Board has some concerns with certain of the costs claimed.

The Board finds that CCC is approved 100% of its reasonably incurred costs of participating in this proceeding. The Board also approves 100% of SEC's costs as revised on August 8, 2011. For VECC, the Board notes that the total shown on Form 3 is \$50,526.28, which contrasts with their cost claim of \$50,560.57; the Board approves the amount of \$50,526.28. For Energy Probe, the Board notes that meal claims for dinner for each of February 24 and March 7, 2011 exceed the allowable rate of \$20.00; the Board has adjusted the claim for these, reducing Energy Probe's claim from 65,254.47 to \$65,248.26.

While recognizing that Horizon's Large Use customers were materially impacted by this Application and the Board's decision on the matters before it, the Board considers that AMPCO has overstated its role. In its letter requesting late intervention, AMPCO stated the following:

AMPCO's Interest

AMPCO is a not-for-profit consumer interest advocacy organization. AMPCO's members represent Ontario's major industries: forestry, chemical, mining and minerals, steel, petroleum products, cement, automotive and manufacturing and business consumers in general.

AMPCO members are major investors, major employers and a major part of communities in which we operate, across Ontario.

AMPCO and its member companies are well known to the Board. AMPCO participates in many proceedings, working groups, consultations and initiatives of the Ontario Energy Board in which matters relevant to Ontario's large electricity consumers are being addressed.

AMPCO's interest in the Board's regulation of local distribution companies relates generally to the interests of consumers with respect to price, adequacy, reliability and quality of electricity service, and, more particularly, to how costs are allocated to, and rates are designed to recover costs from, industrial customers.

In the current application, AMPCO is interested in reviewing the significant increase to large user distribution rates proposed for 2011. [Emphasis added.]¹

While its primary if not sole interest was with respect to its client group, AMPCO was not the only party to address issues pertinent to Large Use customers. Other intervenors, such as SEC, and Board staff in its non-advocacy role, addressed and made submissions on the issues affecting Large Use customers, with respect to load forecast, cost allocation and rate design.

The Board has prepared the following table which itemizes the time claimed by intervenors into two categories; time spent on the Preliminary Issue and the time spent on rest of the Application. In the Board's view, focusing on time spent allows for the Board to distinguish the impacts arising from the rates applied and the tax status of each intervenor. For the purposes of this table, the time claimed between October 21, 2010 and December 17, 2010 has been categorized as pertaining to the Preliminary Issue; all other time has been categorized as pertaining to the Application which includes interrogatories, technical and settlement conferences, oral hearing and submissions. For AMPCO, all time has been allocated to the Application, as AMPCO did not register as an intervenor until after December 17, 2010.

¹ AMPCO Request for Late Intervention Status, December 17, 2010, page 1

	Preliminary Issue		Application		Total Application		
	Hours	% of total	Hours	% of Total	Hours	% of Total	
CCC	R. Warren	13.3	17.0%	64.8	83.0%	78.1	100.0%
	J. Girvan	14	9.6%	131.5	90.4%	145.5	100.0%
	Total CCC	27.3	12.2%	196.3	87.8%	223.6	100.0%
Energy Probe	D. McIntosh	5.5	9.4%	52.75	90.6%	58.25	100.0%
	R. Aiken	12.75	10.8%	105.25	89.2%	118	100.0%
	P. Faye	0	0.0%	13	100.0%	13	100.0%
	Total Energy Probe	18.25	9.6%	171	90.4%	189.25	100.0%
SEC	J. Shepherd	15.6	6.7%	218.1	93.3%	233.7	100.0%
	M. Rubenstein	0	0.0%	10.4	100.0%	10.4	100.0%
	Total SEC	15.6	6.4%	228.5	93.6%	244.1	100.0%
VECC	M. Buonaguro	3.3	4.9%	64	95.1%	67.3	100.0%
	B. Harper et al	1.75	1.7%	98.75	98.3%	100.5	100.0%
	Total VECC	5.05	3.0%	162.75	97.0%	167.8	100.0%
AMPCO	S. Grice	0	0.0%	136.3	100.0%	136.3	100.0%
	D. Crocker	0	0.0%	68.1	100.0%	68.1	100.0%
	B. Taylor	0	0.0%	2.4	100.0%	2.4	100.0%
	W. Clark	0	0.0%	4.25	100.0%	4.25	100.0%
	Total AMPCO	0	0.0%	211.05	100.0%	211.05	100.0%

Average (excluding AMPCO)

189.6

The Board observes that time claims for the Preliminary Issue of early rebasing amounts to between 3% and 12.2% of total hours spent by intervenors participating in all stages of the proceeding. As such, the Board views Horizon's proposal to reduce AMPCO's cost claims by nearly 30% as excessive.

However, given the scope of AMPCO's intervention, the Board considers that the time claimed by AMPCO to be excessive. The Board is of the view that AMPCO's allowed time for participation in the Application should be no more than the average for the other intervenors, specifically 190 hours (189.6 hours rounded up). The reduction of 21.05 hours for AMPCO includes a disallowance of 2.4 hours claimed for Ms. Taylor for time claimed for "[r]esearching whether costs can be awarded against unsuccessful party on appeal from or review of decision of the Ontario Energy Board; locating statutory provisions containing grounds for appeal and grounds for review from a decision of the Ontario Energy Board."² In the Board's view, Ms. Taylor's research time was not directly related to AMPCO's focus and participation in this hearing. The Board has apportioned the remaining reduction of 18.65 hours to Mr. Crocker and Ms. Grice in

² Detail from Invoice Number 1244913, dated August 3, 2011, attached to AMPCO's cost claim filed August 2, 2011

proportion to their individual hours claimed. This results in a reduction of 6.2 hours for Mr. Crocker and 12.45 hours for Ms. Grice.

In light of the foregoing, the Board has calculated a revised cost claim for AMPCO of \$45,451.97 plus tax, which the Board approves.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Horizon shall immediately pay:
 - Association of Major Power Consumers in Ontario \$51,360.76;
 - Consumers Council of Canada \$83,768.62;
 - Energy Probe Research Foundation \$65,248.26;
 - School Energy Coalition \$78,829.32; and
 - Vulnerable Energy Consumers Coalition \$50,526.28.

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

DATED at Toronto, September 01, 2011.
ONTARIO ENERGY BOARD

Original signed by

John Pickernell
Assistant Board Secretary