

**Ontario Energy
Board**

**Commission de l'énergie
de l'Ontario**



EB-2010-0142

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 Toronto
Hydro-Electric System Limited for an order approving
just and reasonable rates and other charges for
electricity distribution to be effective May 1, 2011.

BEFORE: Ken Quesnelle
Presiding Member

Marika Hare
Member

Karen Taylor
Member

DECISION AND ORDER ON COST AWARDS

Background

Toronto Hydro-Electric System Limited ("THESL") filed an application dated August 23, 2010 with the Ontario Energy Board (the "Board") under section 78 of the Ontario Energy Board Act, 1998, S.O. c.15, Schedule B) (the "Act"), for an order or orders approving just and reasonable rates and charges for the rate year commencing May 1, 2011. The Board assigned File Number EB-2010-0142 to the application.

In Procedural Order No. 1 dated October 18, 2010, the Board approved the following parties as intervenors eligible for an award of costs in this proceeding:

- Association of Major Power Consumers in Ontario (“AMPCO”);
- Building Owners and Managers Association of the Greater Toronto Area (“BOMA”);
- Consumers Council of Canada (“CCC”);
- Energy Probe Research Foundation (“Energy Probe”);
- Pollution Probe;
- School Energy Coalition (“SEC”); and
- Vulnerable Energy Consumers Coalition (“VECC”).

The Board issued its Partial 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 THESL.

The Board received cost claims from AMPCO, BOMA, CCC, Energy Probe, Pollution Probe, SEC and VECC.

On August 4, 2011, the Board received objections to certain of these cost claims from THESL, specifically those of AMPCO, SEC and VECC. THESL stated that the basis for its objections to the claims of SEC and VECC was that the technical conference, settlement conference and oral hearing had respectively lasted approximately 7 hours, 39 hours and 11 hours. THESL stated that these intervenors had charged more hours in total for these events than these amounts, indicating more than one representative was in attendance. THESL further stated that in some cases, individuals had charged more time to a proceeding than the actual length of the proceeding. THESL submitted that it was unable to reconcile these costs and argued that some intervenors had erred in their submissions. THESL also argued that in the case of AMPCO, three hours claimed for Shelley Grice related to attendance at the oral hearing on the first day should be rejected as records indicated that Ms. Grice was only in attendance on the second day of the hearing. On this basis, THESL argued that the cost claims outlined below should be denied by the Board:

School Energy Coalition	
Technical Conference	20.1 hours claimed by Tom Adams
Technical Conference	7 hours claimed by Jay Shepherd
Settlement Conference/ADR	10.6 hours claimed by Jay Shepherd
AMPCO	
Oral Hearing	3 hours claimed by Shelley Grice
VECC	
Oral Hearing	26.1 hours claimed by Michael Buonaguro

The intervenors whose costs were questioned by THESL each filed responses disputing THESL's arguments and upholding their claims.

SEC and VECC both stated that the reason for the differential between the time they had claimed for these events and the time over which the events had actually occurred was because they had included preparation time for these events in this category. SEC and VECC therefore argued that this was essentially a classification issue, not one as to whether or not the time in question had actually been incurred and the Board should accordingly approve the claims as filed.

AMPCO submitted that the three disputed hours related to Ms. Grice's attendance at the first day of the oral hearing should also be allowed since she had joined the hearing on that day in the afternoon, in time to assist AMPCO's counsel in his cross examination of THESL. AMPCO suggested that the dispute over this matter may have arisen as Ms. Grice was not in attendance on the morning of the first day of the hearing and, as such, the hearing transcript does not list an appearance by Ms. Grice for that date.

Board Findings

The Board has reviewed the submissions of both THESL and the intervenors related to appropriate levels of cost awards in this proceeding.

The Board accepts the explanations of AMPCO, SEC and VECC.

However, the Board is concerned about the disparity in the total hours claimed by the six intervenors who participated in the proceeding across the full spectrum of issues, i.e. AMPCO, BOMA, CCC, Energy Probe, SEC and VECC.

The Board notes that at the low end of the range of total hours claimed is BOMA at 82 hours. Energy Probe has claimed 116.5 hours, and VECC has claimed 130.65 hours. In contrast, at the high end of the range are the claims of AMPCO, CCC and SEC. Total hours claims by these intervenors are substantially higher. AMPCO has applied for 206.25 claimed hours, CCC 231 claimed hours and SEC 337.7 claimed hours. Although the Board accepts that total hours claimed by parties that fully participate in hearings will not be identical, in this case the Board finds that the disparity in claimed hours is not supportable.

The Board finds that BOMA, Energy Probe, Pollution Probe and VECC are approved 100% of their reasonably incurred costs of participating in this proceeding.

However, the Board finds that the costs claims of AMPCO, CCC and SEC are excessive, based on the comparison outlined above. The Board will, accordingly, disallow 15% of the hours claimed for each of the individuals (consultant(s) and/or legal counsel) employed by AMPCO (with the exception of the claim made for Mr. Wayne Clark due to its *de minimis* nature), CCC and SEC. The Board notes that a 15% reduction in hours claimed will reduce the dollar value of the applied-for cost claims and, where applicable, reduce the related HST claim. As such, the Board has determined that the cost recoveries outlined below are approved in this proceeding.

THE BOARD THEREFORE ORDERS THAT:

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

- Association of Major Power Consumers in Ontario \$48,070.35;
- Building Owners and Managers Association of the Greater Toronto Area \$29,354.50;
- Consumers Council of Canada \$73,314.80;
- Energy Probe Research Foundation \$33,196.52;
- Pollution Probe \$7,673.71;
- School Energy Coalition \$83,434.36; and
- Vulnerable Energy Consumers Coalition \$35,313.09.

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

DATED at Toronto, September 1, 2011.

ONTARIO ENERGY BOARD

Original Signed By

John Pickernell
Assistant Board Secretary