



EB-2013-0321

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.

BEFORE: Marika Hare
Presiding Member

Allison Duff
Member

Christine Long
Member

**DECISION AND ORDER ON AWARDS COSTS
UP TO JUNE 11, 2014**

July 24, 2014

Background

Ontario Power Generation Inc. ("OPG") filed an application, dated September 27, 2013, with the Ontario Energy Board under section 78.1 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15, Schedule B seeking approval for increases in payment amounts for the output of its nuclear generating facilities and the currently prescribed

hydroelectric generating facilities, to be effective January 1, 2014. The application also seeks approval for payment amounts for newly prescribed hydroelectric generating facilities, to be effective July 1, 2014.

On December 20, 2013, the Board issued Procedural Order No. 1, granting the Association of Major Power Consumers in Ontario (“AMPCO”), Canadian Manufacturers & Exporters (“CME”), Consumers Council of Canada (“CCC”), Energy Probe Research Foundation (“Energy Probe”), Environmental Defence, Green Energy Coalition (“GEC”), Haudenosaunee Development Institute (“HDI”), London Property Management Association (“LPMA”), Retail Council of Canada (“RCC”), School Energy Coalition (“SEC”) and Vulnerable Energy Consumers Coalition (“VECC”) intervenor status and cost award eligibility.

On January 17, 2014, the Board granted Lake Ontario Waterkeeper (“Waterkeeper”) and Sustainability-Journal intervenor status and cost award eligibility.

At the oral hearing on June 12, 2014, the Board set out the process for intervenors to file their cost claims for the period ending June 11, 2014 for interim disposition, for OPG to object to the claims and for intervenors to respond to any objections raised by OPG.

The Board received cost claims from all cost eligible intervenors. No objections were received from OPG.

Board Findings

The Board has reviewed the cost claims of AMPCO, CME, CCC, Energy Probe, Environmental Defence, GEC, HDI, Waterkeeper, LPMA, RCC, SEC, Sustainability-Journal and VECC.

The Board finds it important to permit more than one representative from an intervenor group to attend the technical conference if they choose to, but to limit the applicant’s responsibility to only pay the costs of one representative, except where a compelling reason has been provided. The Board finds there were no compelling reasons provided in this case that would warrant representation to be paid for by the applicant for more than one person per intervenor group to be in attendance.

For the technical conference, SEC's claim included attendance for three persons, two counsel claiming respectively 11.1 hours and 8.8 hours and one consultant claiming 6.3 hours. AMPCO's claim included costs for one counsel and one consultant, one claiming 16.8 hours and the other 17.0 hours. The Board has decided that the maximum number of hours that can be claimed for the first Technical Conference, which took place on April 22 and 23, 2014, is 17.0 hours. The Board will reduce SEC's cost claim by 9.2 hours and AMPCO by 16.8 hours.

Further, the Board notes that CCC, Energy Probe and LPMA did not submit issues in advance on which they would pose questions at the technical conference, and ultimately did not pose any questions at the technical conference. The Board has decided that claims related to the technical conference should be removed from the respective claims. CCC's claim will be reduced by 8.5 hours, Energy Probe by 16.3 hours and LPMA by 10.0 hours.

The Board has decided that the maximum number of hours that can be claimed for the Settlement Conference, which took place on May 21, 22, 23 and May 26, 2014, is 24.0 hours. The Board will allow for cost recovery of only one representative. This means a reduction to AMPCO of 12.3 hours, VECC of 6.75 hours, Energy Probe of 3.1 hours and SEC of 15.5 hours. Only SEC and CME billed hours post May 26th, with respect to the settlement conference, which the Board assumes is associated with the drafting of the agreement. The Board approves 13.7 hours for SEC and 1.2 hours for CME for this purpose.

The Board finds that the claim of HDI is excessive as they did not participate beyond the Issues List stage, and the value to the Board was thus limited. The claim was \$39,150. The Board finds that the maximum to be awarded is \$13,050 plus disbursements which is the amount claimed related to the establishment and finalization of the issues list. HDI did not attend the technical conference or submit interrogatories.

With respect to hours for preparation, the Board finds that the hours claimed by SEC and AMPCO were too high compared to the other parties. While SEC had three people on the file, and did provide a rationale as to how they managed their combined participation, the Board finds that there may have been some duplication of effort

relative to other parties and therefore is making a slight reduction in hours to 350 hours for preparation time.

The Board finds that a maximum number of hours allowable is 300 for AMPCO. The Board notes that AMPCO attributed many hours to managing and coordinating internal communications between counsel, its consultant and its Board. It is up to each party to prepare and manage its internal communications within a reasonable level. Although AMPCO's allowed hours in this decision are less than those allowed for SEC, the Board finds that SEC's interrogatories and technical conference questioning covered a broader range of issues and that SEC reviewed many of the confidential documents filed, thus providing greater value to the Board. Participation in these steps would logically result in greater preparation time.

The claims of HDI and VECC each require a minor reduction to comply with the government's *Travel, Meal and Hospitality Expenses Directive*. The claim of Energy Probe also requires a minor reduction due to calculation error in the Summary of Fees and Disbursements. The claim of GEC also requires a minor reduction due to double HST charges. The claim of AMPCO is reduced by \$31.95 related to lunch expenses for a meeting. The Board finds that the claims of CME, Environmental Defence, Waterkeeper, RCC and Sustainability-Journal and the adjusted claims of AMPCO, CCC, Energy Probe, GEC, HDI, LPMA, SEC and VECC are reasonable and each of these claims shall be reimbursed by OPG.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, OPG shall immediately pay the following amounts to the intervenors for their costs:

• Association of Major Power Consumers in Ontario	\$101,487.44;
• Canadian Manufacturers & Exporters	\$71,174.02;
• Consumers Council of Canada	\$49,782.15;
• Energy Probe Research Foundation	\$24,483.41;
• Environmental Defence	\$22,752.65;
• Green Energy Coalition	\$36,303.63;
• Haudenosaunee Development Institute	\$15,377.80;

• Lake Ontario Waterkeeper	\$1,469.00;
• London Property Management Association	\$38,817.46;
• Retail Council of Canada	\$6,223.36;
• School Energy Coalition	\$108,278.50;
• Sustainability-Journal	\$1,202.94;
• Vulnerable Energy Consumers Coalition	\$31,759.18.

DATED at Toronto, July 24, 2014

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary