



**Ontario Energy Board
Commission de l'énergie de l'Ontario**

**DECISION AND ORDER ON COST
AWARDS**

EB-2014-0369

ONTARIO POWER GENERATION INC.

Motion to review and vary the Decision with Reasons on the 2014-2015 payment amounts (EB-2013-0321)

BEFORE: Ken Quesnelle
Presiding Member

Cathy Spoel
Member

May 5, 2016

INTRODUCTION AND SUMMARY

Ontario Power Generation Inc. (OPG) filed a Notice of Motion to review and vary the 2014-2015 payment amounts decision¹ in relation to certain findings with regard to the disallowance of the addition to rate base of \$88 million for the Niagara Tunnel Project and the direction to reduce the 2014 income tax provision to account for the carry-forward of a regulatory tax loss in 2013.

On January 13, 2015, the OEB issued its Notice of Hearing and Procedural Order No. 1 and stated that any party that was determined to be eligible for costs in the 2014-2015 payment amounts proceeding shall be eligible for costs in this proceeding.

On January 28, 2016, the OEB issued its Decision and Order, in which it set out the process for intervenors to file their cost claims, for OPG to object to the claims and for intervenors to respond to any objection raised by OPG.

The OEB received cost claims from the Association of Major Power Consumers in Ontario (AMPCO), Canadian Manufacturers & Exporters (CME), Energy Probe Research Foundation (Energy Probe), School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC). No objections were received from OPG.

Findings

The OEB has reviewed the claims filed by AMPCO, CME, Energy Probe, SEC and VECC to ensure that they are compliant with the OEB's *Practice Direction on Cost Awards*.

The OEB approves the cost claims of AMPCO, Energy Probe and SEC as filed. The claim of VECC requires a reduction of \$3.90 to correct a calculation error in the Summary of Fees and Disbursement being claimed.

The OEB notes that CME has claimed a total of 89.9 hours (Preparation 21.9 hours, Oral Hearing Preparation 58.3 hours, Oral Hearing Attendance 7.0 hours and Post Decision Activities 2.7 hours). The OEB finds that CME's costs are disproportionate to the level of scrutiny and argument provided, especially when compared to the costs of others intervenors of comparable participation level. The OEB will not allow a full award of CME's cost claim.

¹ EB-2013-0321 Decision with Reasons, Ontario Power Generation Inc. - Payment Amounts for Prescribed Facilities for 2014 and 2015, November 20, 2014

The OEB notes that there were four lawyers representing CME on this case. The potential for duplication of effort increases with the addition of each lawyer on any given file. There is no indication of how CME may have avoided such duplication. Although the OEB cannot know the exact reason for the relatively higher costs, it does not find them to be warranted. Cost awards are discretionary, and the determination of parties' awards involves an exercise of judgment on behalf of the OEB. The calculation of the award is meant to reflect the OEB's assessment of the amount of, and more importantly the value of, the work conducted by the party. By its nature this assessment will often lack precision in that the OEB does not typically make adjustments to individual docket entries. Instead the OEB considers the party's participation as a whole and comes to a reasoned conclusion on the appropriate cost award.

In this case the OEB has determined that a disallowance is appropriate in part because the driver for the relatively higher fees costs is not apparent and therefore the CME fees claim will be approved at a level equal to the second highest fees cost claim submitted. The disbursements claim of CME also requires a reduction of \$7.35 to comply with the government's *Travel, Meal and Hospitality Expenses Directive*.

The OEB finds that the claims of AMPCO, Energy Probe and SEC and the adjusted claims of CME and VECC are reasonable and each of these claims shall be reimbursed by OPG.

THE ONTARIO ENERGY BOARD 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 \$17,146.28
 - Canadian Manufacturers & Exporters \$18,574.91
 - Energy Probe Research Foundation \$10,152.11
 - School Energy Coalition \$13,436.83
 - Vulnerable Energy Consumers Coalition \$1,966.96
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, OPG shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

DATED at Toronto May 5, 2016

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary