



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

DECISION AND ORDER ON COST AWARDS EB-2014-0116

TORONTO HYDRO-ELECTRIC SYSTEM LIMITED

Application for electricity distribution rates effective from May 1, 2015
and for each following year effective January 1 through to December
31, 2019

BEFORE: Christine Long
Vice Chair and Presiding Member

Ken Quesnelle
Vice Chair and Member

Cathy Spoel
Member

June 9, 2016

INTRODUCTION AND SUMMARY

Toronto Hydro-Electric System Limited (Toronto Hydro) filed a Custom Incentive Rate (CIR) application (the Application) with the Ontario Energy Board (the OEB) on July 31, 2014 under section 78 of the Ontario Energy Board Act, 1998, S.O. 1998 seeking approval for changes to the rates that Toronto Hydro charges for electricity distribution, to be effective May 1, 2015 and each year until December 31, 2019.

The OEB granted the Association of Major Power Consumers of Ontario (AMPCO); Building Owners and Managers Association Greater Toronto (BOMA); Consumers Council of Canada (CCC), Energy Probe Research Foundation (Energy Probe); School Energy Coalition (SEC); Sustainable Infrastructure Alliance of Ontario (SIA) and Vulnerable Energy Consumers Coalition (VECC) intervenor status and cost award eligibility.

On March 1, 2016, the OEB issued its Decision and Rate Order, in which it set out the process for intervenors to file their cost claims, for Toronto Hydro to object to the claims and for intervenors to respond to any objections raised by Toronto Hydro.

The OEB received cost claims from AMPCO, BOMA, CCC, Energy Probe, SEC, SIA and VECC. No objections were received from Toronto Hydro.

Findings

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

While the OEB requires that intervenors submit cost claim forms using prescribed forms, there is nothing preventing intervenors from supplying additional information to the OEB in order to assist in evaluating the cost claims submitted. Examples include docket entries that outline participation in interlocutory motions or grouping of activities where multiple persons are submitting claims on behalf of an intervenor group.

Some intervenors did provide additional information which was helpful to the OEB in understanding where time was spent. Others did not. The OEB can only use the information provided to it as the basis for making cost claim assessments.

The OEB notes that the hours of attendance in this proceeding amount to 93 hours. This includes the Technical Conference, Issues Conference, ADR Settlement Conference and the Oral Hearing. For simplicity, the OEB has rounded attendance hours to 100 hours. For each party, the OEB will allow up to 100 hours for

attendance. For preparation time, the OEB has applied a factor of 2 and therefore considers 200 hours of preparation time appropriate. This calculation results in a total allowance of 300 hours for preparation and attendance for the procedural steps listed above including the preparation of interrogatories and review of the draft rate order.

The OEB has not included in the 300 hours, the amount of hours claimed for preparation of final argument. These hours will be assessed separately.

The 300 hours also does not include any additional hours identified as being spent on interlocutory matters or the pole rate attachment issue.

In making its assessment of what amount of time spent in preparation is reasonable, the OEB understands that parties will spend different amounts of time on different steps within the proceeding. The OEB has established an envelope of hours to account for this fact.

The panel has considered the nature of the issues in this proceeding and has determined that two hours of preparation time for each hour of attendance is appropriate in this case. The panel also considered in coming to an assessment regarding attendance and preparation time the criteria for cost awards set out in the Practice Direction¹ to determine the appropriate costs for each intervenor. For example, the panel considered whether questions asked in cross-examination were unduly repetitive of questions previously asked and whether parties made reasonable efforts to ensure that areas covered were not duplicated.

The OEB has chosen a factor of two for preparation time to attendance time because the OEB is of the view that this should be a sufficient amount of time for each intervenor to address the issues that are specific to the interest that it represents in this case. Intervenors are awarded funding to allow for issues specific to each intervenor class to be raised before the OEB. The OEB also expects that for any common issues, intervenors will co-ordinate their efforts in order to ensure efficiency. This ratio of preparation time to attendance time may differ as between different applications. Based on the issues involved in Toronto Hydro's application, the OEB deems the ratio selected to be appropriate. The 300 hour amount will serve as a guide for the OEB in assessing each intervenor's cost claim.

The OEB will not allow attendance hours beyond 100 hours. Simply put, there were a limited amount of attendance hours in this proceeding. The OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party, unless a compelling reason is provided when cost claims are filed.

¹ Ontario Energy Board *Practice Direction On Cost Awards* Revised April 24, 2014

Where preparation hours exceeded the 200 allotted hours, the OEB considered the value of those hours to the proceeding and determined whether the extra time was justified given the participation of the specific intervenor. In instances where the intervenor has not claimed 300 hours for attendance and preparation, the OEB has still reviewed the cost claim in order to ensure that the hours claimed were justified based on the value the intervenor brought to the proceeding.

Time docketed prior to the filing of the rate application (July 31, 2014) will not be recoverable as part of this OEB cost claim process. Parties are free to consult with applicants prior to rate applications being filed, but the OEB will not approve cost claims for time spent prior to an application being filed. The OEB is making the modifications listed below.

AMPCO

AMPCO claimed 499.85 hours in total. AMPCO claimed 120.75 hours for preparation of final argument which the OEB will allow. AMPCO's claimed time relating to its participation in the Canadian Electricity Association (CEA) interlocutory motion and reviewing evidence related to the wireline attachment issue is 48.4 hours. The OEB will allow this amount to be recovered. AMPCO claimed 41.75 hours for other conference preparation and attendance and 288.95 for attendance and preparation time.

It is not clear to the OEB that the other conference preparation and attendance time is related to an interlocutory motion. Therefore the OEB has considered the 41.75 as part of the general preparation and attendance time resulting in preparation and attendance time of 330.7 hours. The OEB is not satisfied that AMPCO's participation warrants the additional amount of time claimed, above the guide of 300 hours. When comparing the time claimed by AMPCO to the other intervenors participating in the process, the OEB is not satisfied that additional preparation hours are warranted based on the role played by AMPCO. The OEB notes that four hours of attendance were for two representatives to attend the Technical Conference. The OEB will only allow a claim for the attendance of one. The OEB will reduce the AMPCO claim by 30.7 hours for a reduction of \$7,859.20 at a blended rate of \$256².

The OEB further notes that AMPCO has claimed \$28.82 for a working lunch. The OEB will not allow this claim as it does not comply with the government's *Travel, Meal and Hospitality Expenses Directive*.

² The blended rate is calculated based on the rate and preparation, attendance and response hours of three consultants working on the file.

BOMA

BOMA claimed a total of 524.4 hours of which 424.80 hours were for preparation and attendance and 99.6 hours for argument preparation. The OEB will reduce BOMA's preparation and attendance time by 124.8 hours (\$41,184). The OEB finds that the amount of time claimed for preparation is too high given BOMA's level of participation when compared to other intervenors with lower cost claims. BOMA claimed 130.3 hours for preparation of interrogatories. The next highest claim for this step was 88.2 hours. The average amount of time spent on interrogatories by the five other intervenors was 45 hours. The OEB has reviewed the interrogatories asked by BOMA and does not find that the extra hours are warranted. Time claimed for settlement conference preparation was 44 hours higher than the time which was claimed by the next highest intervenor.

BOMA claimed 99.6 hours for preparation of its final argument. The OEB notes that four main areas were covered. The OEB finds that the amount of time claimed for the final argument is too high. The OEB will reduce the argument preparation amount allowed to \$28,000 for a reduction of \$4,868. This amount is more in line with other intervenors who pursued a similar amount of issues with a similar level of analysis.

Based on the above reasons BOMA's claim for fees will be reduced by \$46,052.00 before tax.

CCC

CCC claimed a total of 360.5 hours of which 289.5 hours is preparation and attendance time and 71 hours for final argument preparation. The OEB has determined that CCC's total claim of 289.5 hours for preparation and attendance hours is reasonable and therefore no reduction is required.

The OEB is reducing the amount claimed for preparation of final argument from \$23,010 to \$20,000. This amount is more aligned to other intervenors who filed arguments that were similar in analysis and issues covered.

Energy Probe

Energy Probe claimed a total of 231 hours of which 184.5 hours was for preparation and attendance and 46.5 hours for argument preparation. The OEB will disallow 11.75 hours for preparation time that occurred prior to the rate application being filed for the reasons outlined above resulting in a reduction of \$3,617.50. The OEB will allow the remaining 172.75 hours for preparation and attendance. The OEB will also allow the 46.5 hours claimed for preparation of the final argument.

SEC

SEC claimed a total of 706.1 hours of which 466.5 hours were for preparation and attendance, 148.5 hours for argument preparation and 91.1 hours for other conference preparation and attendance, which was for time spent on the interlocutory motion.

The OEB will allow the 148.5 hours claimed for preparation of the final argument. While SEC's claim for final argument was much higher than other intervenors, the final argument was comprehensive and provided detailed analysis of a large number of areas, which was of considerable assistance to the OEB.

The OEB will also allow the 91.1 hours claimed for the interlocutory motion related to the production of the benchmarking reports which was opposed by the CEA. While the amount of time docketed for this one motion is substantial, the OEB notes that SEC played a major role in the hearing of this motion.

The OEB notes that of the remaining 466.4 hours for preparation and attendance, 35.7 hours were claimed for time spent prior to the filing of the application (18.5 specifically identified as pre-filing hours and an additional 17.2 not specifically identified as such but docketed prior to the July 31, 2014 filing of the rate application). For the reasons stated above, the OEB will disallow the 35.7 hours which were docketed prior to the filing of the rate application.

The OEB finds that SEC took a major role in the pole attachment issue and the interlocutory motion on benchmarking. The OEB will approve SEC's cost claim related to these steps even though SEC's claims are much higher than the other intervenors. In these areas, it is clear to the OEB that the hours of time spent by SEC is distinguishable from the other intervenors. The OEB will allow 55 hours which SEC states were attributable to the pole attachment issue.

The OEB is left to consider the 375.8 remaining hours claimed for preparation and attendance time. SEC's claim is 75.8 hours above the OEB's guideline in this case for attendance and preparation. The OEB will not approve the claim for this additional preparation time. In coming to its conclusion, the OEB considered whether an additional 75.8 hours of preparation time was justified based on SEC's participation in the proceeding. The OEB does not find that SEC's claim for substantially more preparation time than the other intervenors is justified given the nature of the participation of SEC.

The OEB will reduce SEC's attendance and preparation time by 75.8 hours using a blended rate of \$266³ per hour. This amounts to a reduction of \$20,162.80. As

³ The blended rate is calculated based on the weighted average of preparation, attendance and responses hours and rate of two counsels.

indicated above, the OEB has disallowed 35.7 hours docketed prior to the filing of the rate application. Therefore the total reduction for SEC is \$31,063.80.

SIA

SIA claimed a total of 183 hours of which 112.75 were for preparation and attendance, 40.75 hours for argument preparation and 29.5 hours for other conference preparation and attendance. The OEB has determined that SIA's total claim of 112.75 hours for preparation and attendance is reasonable. SIA claimed 29.5 hours for "other conferences." A review of the dockets show that these hours were related to preparation and commenting on the draft rate order and 16.5 hours was attributable to participation in the CEA benchmarking motion. The OEB has determined that the time claimed was appropriate given the issues raised by SIA. The OEB approves the amount claimed for final argument.

VECC

VECC claimed a total of 345.05 hours of which 248.2 hours were for preparation and attendance, 60.95 hours for argument preparation and 35.9 hours for other conference preparation and attendance. The OEB has determined that VECC's total claim of 248.2 hours for preparation and attendance hours is reasonable and therefore no reduction is required. VECC claimed 35.9 hours for "other conference preparation and attendance". The OEB will approve this amount which includes the retaining of an expert to assist with interrogatories on the pole attachment issue. The OEB will approve all hours claimed for preparation of the final argument.

THE ONTARIO ENERGY BOARD ORDERS THAT:

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

• Association of Major Power Consumers of Ontario	\$140,159.38
• Building Owners and Managers Association; Greater Toronto	\$143,634.18
• Consumers Council of Canada	\$126,944.20
• Energy Probe Research Foundation	\$75,085.15
• School Energy Coalition	\$173,076.68
• Sustainable Infrastructure Alliance of Ontario	\$59,969.10
• Vulnerable Energy Consumers Coalition	\$118,207.58

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

DATED at Toronto June 9, 2016

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary