



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

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**DECISION AND ORDER ON COST  
AWARDS**

**EB-2016-0152**

**ONTARIO POWER GENERATION INC.**

**Application for payment amounts for the period from January 1,  
2017 to December 31, 2021**

**BEFORE: Christine Long**  
Vice Chair and Presiding Member

**Cathy Spoel**  
Member

**Ellen Fry**  
Member

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**March 6, 2018**

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## INTRODUCTION AND SUMMARY

This is a decision of the Ontario Energy Board (OEB) on cost claims filed with respect to an Ontario Power Generation Inc. (OPG) proceeding.

OPG filed an application with the OEB on May 27, 2016 under section 78.1 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B), seeking approval for changes in payment amounts for the output of its nuclear generating facilities and most of its hydroelectric generating facilities.

The OEB granted the following parties intervenor status and cost award eligibility:

- 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 Canada Inc. (Environmental Defence)
- Green Energy Coalition (GEC)
- Lake Ontario Waterkeeper (LOW)
- London Property Management Association (LPMA)
- Ontario Association of Physical Plant Administrators (OAPPA)
- Quinte Manufacturers Association (QMA)
- School Energy Coalition (SEC)
- Sustainability-Journal
- Vulnerable Energy Consumers Coalition (VECC)

In Procedural Order No. 9, issued on July 11, 2017, the OEB made provision for the filing of cost claims for the period up to and including May 29, 2017.<sup>1</sup> The OEB received cost claims from AMPCO, CME, CCC, Energy Probe, Environmental Defence, GEC, LPMA, OAPPA, QMA, SEC, Sustainability-Journal and VECC. By an email dated August 15, 2017, LOW indicated that they will not file a cost claim.

On September 5, 2017, OPG filed a letter commenting that the number of preparation hours under the heading “pre-hearing conference” on the cost claim form submitted by each intervenor varied widely, ranging from less than one hour to greater than 60 hours.

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<sup>1</sup> The Decision and Order was issued on December 28, 2017. The Decision stated that the OEB will make provision in the final payment amounts order for the filing of claims for costs incurred since May 30, 2017.

With respect to interrogatories, OPG commented that certain intervenors required a significant number of hours to prepare interrogatories yet submitted a relatively small number of interrogatories that were limited to a narrow set of issues. With respect to the oral hearing, OPG commented that intervenors' preparation time for the oral hearing also varied significantly. OPG noted that certain intervenors submitted claims for a significant number of hours to prepare for and to attend the oral hearing despite focusing on a relatively minor set of issues and/or duplicating areas that were already covered by other intervenors during the hearing. OPG commented that the preparation time claimed by some intervenors for the argument stage appeared to be excessive both in relation to the limited scope of issues addressed in their written submissions and in consideration of whether those submissions were able to meaningfully contribute to the OEB's understanding of one or more of the issues. OPG did not make any proposal on how these issues should be taken into account in the approved dollar amounts of the cost claims. No response was filed regarding OPG's letter.

The OEB has reviewed the claims filed to ensure that they are compliant with the OEB's *Practice Direction on Cost Awards* (Practice Direction).

The OEB notes that section 5 of the Practice Direction sets out criteria that the OEB may consider when determining cost claims. These criteria are not exhaustive and the OEB has broad discretion in deciding on costs. The criteria include whether the intervenor has demonstrated through its participation and documented in its cost claim that it has:

- Participated responsibly in the process
- Contributed to a better understanding by the OEB of one or more of the issues in the process
- Made reasonable efforts to combine its intervention with that of one or more similarly interested parties, and to co-operate with all other parties
- Made reasonable efforts to ensure that its participation in the process, including its evidence, interrogatories and cross-examination, was not unduly repetitive and was focused on relevant and material issues

The OEB does not award costs solely based on the number of hours docketed by the participant, nor does the OEB make a determination of the amount of costs that are appropriate only by looking at the number of interrogatories that have been asked, witness panels examined or the length of cross-examination. Rather the OEB undertakes a qualitative assessment and awards costs for time spent that assisted the OEB in its understanding of the application and in determining the issues within the

scope of the application. A few well focused interrogatories and cross examination questions often elicit the most useful information. Similarly, a concise argument that focuses on the most important aspects of an issue can be the most helpful to the OEB.

The OEB finds that cost claim disallowances are appropriate in this proceeding. The OEB recognizes that while this was a complex proceeding, there must still be efficiencies. The OEB finds that in some circumstances the amount of time claimed by a participant did not correspond to the value the OEB derived from the intervenor's participation. Despite the disallowances, the approved costs claims allow a substantial amount of preparation and/or hearing time.

## Findings

Parties are free to consult with applicants and each other 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 has indicated this in previous applications before the OEB and therefore it should not come as a surprise to participants in this application.

The OEB notes that AMPCO, CCC, CME, Environmental Defence, GEC, SEC and VECC claimed costs for the period before the application was filed with the OEB on May 27, 2016. The OEB will disallow time docketed and disbursements for the period prior to the filing of the payment amounts application.

## AMPCO

The OEB disallows the three hours claimed by AMPCO for the period prior to the application being filed.

The OEB has reduced AMPCO's time for the preparation of interrogatories from 130.1 hours to 100 hours using a blended rate of \$301.64 an hour.<sup>2</sup> The OEB notes that AMPCO used experts to assist with interrogatories; as a result the OEB expects that there would have been greater efficiencies in interrogatory preparation. AMPCO claimed 180 hours for oral hearing preparation. The OEB finds that this amount of time is excessive for preparation. The OEB has reduced the oral hearing preparation to 150

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<sup>2</sup> The blended rate is based on a weighted average of rates charged by AMPCO consultants for Interrogatory Preparation.

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hours from 180 hours and has used a blended rate of \$311.49 per hour.<sup>3</sup>

The OEB awards AMPCO a total amount of \$217,490.49.

### CME

CME's cost claim includes 16.9 hours of costs and disbursements incurred prior to the application being filed. The OEB will therefore reduce CME's claim by 16.9 hours and disbursements in the amount of \$494.62 plus \$64.30 HST. The OEB has also reduced CME's total remaining 708.7 hours by 10%. The OEB acknowledges a reduction voluntarily made by CME to account for counsel transition issues, however, the OEB is of the view that a further reduction is required to account for the amount of time claimed for preparation. The claim of CME requires a reduction of \$13.46 due to non-compliance with the government's *Travel, Meal and Hospitality Expenses Directive* and incorrect HST calculation on a meal claim. The OEB awards CME a total amount of \$177,997.05.

### CCC

The OEB will disallow the 5.5 hours claimed by CCC for the period prior to the application being filed. The OEB has also reduced CCC's total remaining 452.50 hours by 10%. The OEB considers that the hours claimed by CCC are too high given the nature and lesser complexity of the issues that CCC pursued. CCC's claim will be reduced to \$144,439.43.

### Energy Probe

The OEB has reduced Energy Probe's claim for Dr. Larry Schwartz's time from \$36,052.50 to \$20,000. The OEB considers that the time claimed by Dr. Schwartz is too high (It includes two hours of technical conference preparation, 5.5 hours technical conference attendance, 9.25 hours of interrogatories preparation, 2.25 hours of interrogatories responses, 35 hours of argument preparation, 43 hours of oral hearing preparation and 12.25 hours oral hearing attendance). Certain lines of questioning put forward by Dr. Schwartz were not helpful to the OEB in determining the issues before it, as they were too abstract to be of value to the OEB in making its determinations. The OEB awards Energy Probe a total amount of \$113,928.38.

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<sup>3</sup> The blended rate is based on a weighted average of rates charged by AMPCO counsel and consultants for Oral Hearing Preparation.

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### Environmental Defence

The OEB will disallow the two hours claimed by Environmental Defence for the period prior to the application being filed. The OEB has reviewed the amount of time claimed by Environmental Defence and is satisfied based on Environmental Defence taking the lead on the preliminary motion that the amount of time was appropriate. The claim of Environmental Defence requires a reduction of \$119.04 due to costs incurred after May 29, 2017. The OEB therefore awards Environmental Defence a total amount of \$68,548.58.

### GEC

The OEB will disallow the 3.5 hours of costs claimed by GEC for the period prior to the application being filed. The GEC claim also requires an adjustment of \$21.19 due to removal of one unreadable receipt as agreed to by Mr. David Poch, and an adjustment to a further receipt. GEC is awarded a total amount of \$97,332.94.

### LPMA

The OEB has determined that the cost claim as filed by LPMA is in accordance with the Practice Direction and approves the cost claim of \$92,145.80 as filed. The OEB notes that LPMA charged 43.6 hours for oral hearing attendance but did not cross examine. The OEB reviewed LPMA's final submission and found it to be helpful. The OEB does not necessarily require a party to cross examine in order to be able to recover time for oral hearing attendance.

### OAPPA

The OEB has reduced OAPPA's claim for fees by \$32,433.83. The OEB notes that OAPPA pursued a small number of issues and cross-examined only two witness panels. The hours claimed should be reflective of that level of contribution. Other intervenors which claimed similar amounts contributed to many more aspects of the hearing. The claim of OAPPA also requires a reduction of \$20 due to a parking receipt filed by mistake as confirmed by Mr. Scott Walker. The OEB awards OAPPA a total amount of \$56,820.01.

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QMA

The claim of QMA requires an adjustment of \$203.07 due to courier charges and an error in the calculation of HST charged on a mileage claim. The OEB is satisfied that the overall cost claim of QMA is reasonable. Accordingly, QMA is awarded a total amount of \$23,975.70.

SEC

The OEB will disallow 24.7 hours claimed by SEC for the period prior to the application being filed.

The OEB notes that SEC's cost claim is almost twice as high as any other intervenor. However it considers that SEC's contribution to the OEB's understanding of the issues was not double that of the contribution from other intervenors. The OEB further notes that in all areas of preparation and argument drafting, SEC's claim is significantly higher than the other intervenors.

SEC claimed 604.80 hours of preparation (including 40.10 hours of technical conference preparation, 150.50 hours of interrogatories preparation, 7.5 hours of issues conference preparation, 49.10 hours of settlement conference preparation and 357.60 hours of oral hearing preparation). The OEB considers these hours excessive regardless of the contribution to the hearing. Time spent on earlier stages of the proceeding should reduce the time that needed to be spent on hearing preparation, as the same issues are being explored.

While SEC did cross-examine all witness panels, in some cases the cross-examination was repetitive of that already undertaken by other parties. This contributes to a longer hearing and more costs for all parties. The OEB will reduce preparation hours by 200 hours, but will not reduce any of the hearing time claimed.

SEC has claimed 256.3 hours for preparation of its argument. While SEC's argument was helpful to the OEB, in the OEB's view the quality relative to other intervenors' arguments did not reflect the considerably higher number of hours spent on its preparation. The OEB will reduce the number of hours spent on argument preparation by 50 hours. With the reduction, the hour amount awarded to SEC for argument preparation is still the highest of all the intervenors.

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Even with these reductions SEC's claim is still significantly higher than the next highest intervenor. The OEB has used a blended rate of \$256.22 an hour for preparation hours up to and including the oral hearing, and \$261.58 an hour for argument preparation.<sup>4</sup>

After making the referenced downward adjustments, the OEB awards SEC a total amount of \$256,368.90.

### Sustainability-Journal

The OEB has reduced 10% of the hours claimed, but has not reduced disbursements. Many of the issues pursued by Sustainability-Journal were out of scope. Even though Sustainability-Journal was advised that the issues were out of scope, it continued to pursue them. Sustainability-Journal is awarded a total amount of \$11,885.81.

### VECC

The OEB will disallow 2.5 hours claimed by VECC for the period prior to the application being filed. The claim of VECC requires a reduction of \$3.53 due to an error related to its reported hours.

The OEB has also reduced VECC's claim for Dr. Laurence Booth by one-third. The OEB is of the view that the time claimed by Dr. Booth is too high (It includes 20.75 hours of pre-hearing conference preparation, 33.25 hours of interrogatories preparation, 20.25 hours of argument preparation, 19.50 hours of oral hearing preparation and 8.00 hours oral hearing attendance). Dr. Booth's role was to assist counsel with preparation, but the hours claimed were more in line with the time that would be spent to file an expert report. The OEB did not approve the filing of an expert report by VECC when the OEB determined it would not fund additional reports on cost of capital. The OEB awards VECC a total amount of \$123,646.65.

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<sup>4</sup> The blended rate is based on a weighted average of rates charged by SEC counsel for the two periods.



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**THE ONTARIO ENERGY BOARD ORDERS THAT:**

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

• Association of Major Power Consumers in Ontario	\$217,490.49
• Canadian Manufacturers & Exporters	\$177,997.05
• Consumers Council of Canada	\$144,439.43
• Energy Probe Research Foundation	\$113,928.38
• Environmental Defence Canada Inc.	\$68,548.58
• Green Energy Coalition	\$97,332.94
• London Property Management Association	\$92,145.80
• Ontario Association of Physical Plant Administrators	\$56,820.01
• Quinte Manufacturers Association	\$23,975.70
• School Energy Coalition	\$256,368.90
• Sustainability-Journal	\$11,885.81
• Vulnerable Energy Consumers Coalition	\$123,646.65

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

**DATED** at Toronto March 6, 2018

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary