

Topic Area

Intervenor Performance Comparison

Board Staff Question IR1

Reference

Board Decision and Order for Phase 2A Intervenor Cost Claims – November 28, 2008

AMPCO, OMA and OFA Motion Record – December 22, 2008

Ontario Power Authority IPSP Pre-filed Evidence – Interrogatories and Responses
Documents I-5, I-22 and I-29

Preamble

The Board indicated in its Decision and Order for the Phase 2A Intervenor Cost Claim at pages 8 and 9 that for a somewhat similar cost claim amount GEC, in comparison to AMPCO et al, generally covered more issues and GEC's contribution also encompassed a larger part of the pre-filed evidence.

It states in the Motion Record of AMPCO, OMA and OFA at paragraph 21c that "The Moving Parties submit that it is not appropriate to assess the value of the Moving Parties evidence and related cost claim simply by counting reports and issues".

Question

Considering that GEC produced 247 IRs on the pre-filed evidence, 36 IRs on Intervenor evidence and nine distinct reports versus AMPCO et al.'s 97 IRs on the pre-filed evidence, 25 IRs on Intervenor evidence and six reports (one a summary of three others), why does AMPCO believe that comparisons cannot be drawn about the relative workload undertaken by the two intervenors in question in producing their evidence and their interrogatories?

Response IR1:

Comparisons can be drawn between the number of IRs, reports, etc. between one intervenor and another, but those comparisons do not say anything meaningful about the quality of one intervention versus another. Similarly, a count of IRs by an intervenor says nothing about the workload of that intervenor with respect to the body of its case, except perhaps to the time spent formatting interrogatory submissions. A numerical count of submissions by a party is at best an unreliable indicator of effort, interest or workload of an intervenor.

The Board's rules of practice and procedure (section 23.02) speak to the Board's expectations of an intervenor: "The person applying for intervenor status must satisfy the Board that he or she has a substantial interest and intends to participate actively and responsibly in the proceeding by submitting evidence, argument or interrogatories, or by cross-examining a witness."

The Board's practice direction on cost guidelines sets out, in section 5.01, the principles that the Board will apply in awarding costs:

- "... the Board may consider, amongst other things, whether the party:
- (a) participated responsibly in the process;
 - (b) asked questions on cross examination which were unduly repetitive of questions already asked by other parties;
 - (c) made reasonable efforts to ensure that its evidence was not unduly repetitive of evidence presented by other parties;
 - (d) made reasonable efforts to co-operate with other parties in order to reduce the duplication of evidence and questions on cross-examination;
 - (e) made reasonable efforts to combine its intervention with that of similarly interested parties;
 - (f) contributed to a better understanding by the Board of one or more of the issues addressed by the party;
 - (g) complied with directions of the Board including directions related to the pre-filing of written evidence;
 - (h) addressed issues in its written or oral evidence or in its questions on cross-examination or in its argument which were not relevant to the issues determined by the Board in the process;
 - (i) engaged in any other conduct that tended to lengthen unnecessarily the duration of the process; or
 - (j) engaged in any other conduct which the Board found was inappropriate or irresponsible.

The Board's rules and guidelines make no mention of any criteria relating to a numerical count of submissions or interrogatories by an intervenor or to the relative work load of one intervenor vis-à-vis another.

The question of why an intervenor should submit more or fewer interrogatories or additional submissions as evidence would presumably reflect that intervenor's strategy in terms of future arguments the intervenor would wish to make, that intervenor's perceptions of the deficits in the evidentiary record provided by the submissions of the applicant or other intervenors, or it might simply reflect a different starting point in terms of the level of knowledge of that intervenor or his understanding of the facts and analyses at issue in the proceeding.

The intervention of the Alliance was deliberately focused on the interests of consumers with respect to the price of natural gas and of electricity. Other intervenors may have taken a broader interest in the application. The approach of the Alliance in the evidentiary phase of the proceeding, i.e., in preparing interrogatories of the applicant and other intervenors and in preparing and submitting evidence, was to address what were considered to be deficits in the application and to otherwise attempt to complete the evidentiary record to support potential arguments to be made at a later phase of the proceeding.

Topic Area

Scope of Intervenor's Contributions

Board Staff Question IR2

Reference

IPSP Board Proceeding EB-2007-0707 Issues Hearing Transcripts

Board Decision and Order for Phase 2A Intervenor Cost Claims – November 28, 2008

Board Decision With Reasons for Integrated Power System Plan Issues – March 26, 2008

Preamble

AMPCO stated at various times in the IPSP proceeding that while it had general concerns about a variety of matters, it was mainly concentrating its resources on the effects of the IPSP on electricity costs and prices. For example Mr. Rodger, AMPCO's counsel, made this point at the Issues Hearing and this is generally reflected on pages 27 to 31 of the January 15, 2008 transcript of that proceeding.

The Board's Decision and Order for Phase 2A Intervenor Cost Claims indicates on page 8 that "the Alliance states that the [Alliance evidence submission] provides analysis and advice to the Board regarding the probable directional impact of the Plan on prices and rates with particular emphasis on natural gas commodity prices, electricity commodity process and the combined impact of these prices on the Global Adjustment and other elements of customer bills."

Further, the Board's Issues Decision on page 9 stated that the Board is not able "to review the price and rate impacts of the Plan in any level of detail."

The Board also indicated in its Decision and Order for the Phase 2A Intervenor Cost Claim at page 9 that "the interrogatories and evidence filed by the Alliance referred to many parts of the OPA's pre-filed evidence and many of the issues, however, its principal foci were the natural gas issues (A15 to A19 of the Issues Decision) and the consumer pricing issue which is included in issue B3 of the Issues Decision. GEC, on behalf of itself, Pembina and OSEA, filed 9 reports that combined covered almost all of the issues identified in the Issues Decision. GEC's interrogatories also covered many issues, including conservation, renewable supply, nuclear for baseload, natural gas and sustainability. As noted previously, none of the evidence filed by the eligible parties has been tested to determine its value to the Board in this proceeding. However, the Board finds that the cost claim for the Alliance is excessive relative to breadth of issues addressed in the evidence".

Question

Since AMPCO's focus was generally targeted toward the price and cost of electricity and the effects of the IPSP on these factors, can AMPCO provide further explanation why it believes its scope of work was as broad as that of some of the other intervenors such as GEC?

Response IR2:

The Alliance submissions do not purport to represent a comprehensive scope of interest in the proceeding.

We are not in a position to comment on the scope of work of other intervenors. In most cases, our review of the work of other intervenors was motivated by our interest in understanding the impact of the proposed integrated power system plan on the probable directional impact of the proposed plan on prices and rates with particular emphasis on natural gas commodity prices, electricity commodity process and the combined impact of these prices on the Global Adjustment and other elements of customer bills.

The inference seems to be, in the interrogatory and in the selective excerpts from the Board's Decision and Order for Phase 2A Intervenor Cost Claims, an expectation that all intervenors should approach each case with an equally broad interest in the issues raised.

AMPCO and other members of the Alliance worked together in the proceeding out of a shared interest in price, adequacy, reliability and quality of electricity service, and the potential impacts of the proposed integrated power system plan on these interests of consumers.

One would expect other intervenors to have other interests, much as the Green Energy Coalition represents interests related to environmental matters, but it does not seem fair or reasonable to suggest or imply a criticism of consumers for focusing primarily on the interests of consumers.

Topic Area

Work done for Phase 1 of the proceeding

Board Staff Question IR 3

Reference

AMPCO, OMA and OFA Motion Record – December 22, 2008

Board Decision and Order for Phase 1 Intervenor Cost Claims – May 8, 2008

Preamble

Mr. White was denied costs in AMPCO's Phase 2A cost claim for work that Mr. White carried out in 2007 and in January 2008 (Phase 1 of the proceeding). Mr. White states in paragraphs 14-21 of Exhibit A of the Motion Record that he did not file costs for this work at the Phase 1 stage of the proceeding as AMPCO did not receive the Board's letter of April 17, 2008 stating that the deadline for filing Phase 1 claims was April 23, 2008. The Board's April 17, 2008 letter was not sent to AMPCO as it was only sent to eligible parties that had not filed Phase 1 costs (and AMPCO had filed such costs). Mr. White states at paragraph 19 of Exhibit A of the Motion Record that he only become aware of the Phase 2A cost claim deadline when he read a reference to it in the Board's Decision and Order for Phase 1 Intervenor Cost Claims, but at that time he decided to hold these costs and file them with the Phase 2A Intervenor Cost Claims (paragraph 21).

At paragraph 37 of Exhibit A of the Motion Record, it states that AMPCO was the informal secretary and treasurer of the Alliance and at paragraph 38 of this same document it states that AMPCO took on overall management of the IPSP proceeding for the Alliance. Exhibit G of the Motion Record indicates that the Alliance partners had frequent contact through meetings, conference calls and emails.

Questions

When Mr. White became aware that he was not able to file the AMPCO Phase 1 cost claims in a reasonably timely manner, why did he not attempt to seek Board approval for a filing delay for these claims?

Considering that the OMA did receive the April 17, 2008 letter and AMPCO as secretary and treasurer of the Alliance had frequent contact with Alliance members (more than 15 meetings, conference calls and emails in the first three months of 2008), why was AMPCO not aware of this matter and of the associated correspondence?

Response IR3:

The question seems to suggest or infer a criticism that either AMPCO or Mr. White failed to act in a reasonably timely manner. Had the Board elected to correspond with AMPCO in advance of the deadline and AMPCO or Mr. White then had not met the deadline set by the Board then this might be valid.

Typically, a request for a filing delay would occur prior to a deadline for filing. In this case, the deadline was well past before AMPCO or Mr. White was apprised of it by reading a reference to the deadline in the Board's Decision and Order on Phase 1 costs which was issued on May 8, 2008, more than 2 weeks after the deadline had passed.

The judgment at the time was to carry these costs forward for submission in the next cost claim, for the following reasons: (1) it was no fault of AMPCO's that the Board elected not to include AMPCO among the recipients of its April 17, 2008 letter; (2) these costs were incurred in good faith and would otherwise have been eligible; (3) nobody was harmed except AMPCO and Mr. White by the delay in filing this cost claim, (4) given that AMPCO was blameless, the costs were incurred in good faith and would otherwise have been eligible and the delay harmed nobody, it was thought the Board would treat the request favourably.

Mr. White became aware when he read a reference to the April 17, 2008, letter in the Board's Decision and Order for Phase 1 Intervenor Cost Claims issued on May 8, 2008. Given the huge amount of correspondence in this proceeding, which was taking place concurrently with other Board proceedings in which AMPCO was involved (including a significant application by OPG for approval of payment amounts for prescribed assets), it is perhaps understandable that it might not have occurred to Mr. White to ask AMPCO's Alliance partners about correspondence of which he had no knowledge.

Topic Area

Mr. White's role at AMPCO

Board Staff Question IR4

Reference

AMPCO, OMA and OFA Motion Record— December 22, 2008

Preamble

Mr. White states in paragraph 6 of Affidavit A of the Motion Record that he resigned as President of AMPCO on October 31, 2007. In a number of proceedings before the Board since November 1, 2007, Mr. White has signed the AMPCO intervention request either as AMPCO President (e.g. OPG Payment Amounts for Prescribed Facilities EB-2007-0905) or with no title at all (e.g. Hydro One Networks 2009/2010 Transmission Revenue Requirement and Rate Application EB-2008-0272) and Mr. White is still noted as AMPCO President on the AMPCO website.

Question

Can Mr. White explain these discrepancies in AMPCO's communications with the Board for these various proceedings?

Response IR4:

The contract between AITIA Analytics Inc. and AMPCO engages Mr. White to “act as President”. The contract contains no provisions to prohibit or condition the use of the title “President” on correspondence.

The judgment at the time was that no public announcement needed to be made and that the transition should appear to be seamless to AMPCO members.

In hindsight, it might have been appropriate to discontinue the use of the title and to communicate with stakeholders in the electricity sector, including the Board, about the nature of the change. The use of the title on some correspondence has apparently, and inadvertently, led to confusion and misunderstandings on the part of some people. That is regrettable.

The use of the title has been discontinued on all correspondence and other printed material. References on the AMPCO website have been revised.

There was never any intention by AMPCO, by AITIA Analytics Inc., or by Mr. White, to deliberately deceive or mislead anybody in any way. There was no intent to cause harm to anybody and there was no intent to create ambiguity for personal gain. In our submission no harm has been caused and nobody has gained by the use of the title. Any perceived harm is regrettable.

Topic Area

Mr. White's role at AMPCO

Board Staff Question IR5

Reference

AMPCO, OMA and OFA Motion Record – December 22, 2008

Preamble

In paragraph 7 of Exhibit A of the Motion Record, Mr. White states that he provides the services of President to AMPCO through a consulting services agreement between AMPCO and Mr. White's consulting company, AITIA Analytics Inc.

Questions

In providing services as President through his consulting company, does Mr. White carry out all the duties that he would as a president that was an employee of the organization?

In providing these services as President of AMPCO through his consulting company, is Mr. White considered an officer of AMPCO?

Who at AMPCO has authority for approval of work or documents issued by AMPCO and who at AMPCO has authority for approval of invoices or of monies to be paid by AMPCO?

Response IR5:

No. The services provided by AITIA Analytics Inc. and Mr. White are as specified in a schedule to the consulting services agreement between AITIA Analytics Inc. and AMPCO.

No. Mr. White is not an officer or a director of AMPCO.

The AMPCO Board of Directors has authority to approve work and documents issued by AMPCO subject to AMPCO Bylaw No. 1 as amended. The AMPCO Board of Directors, by resolution and pursuant to Bylaw No. 1, has delegated to Mr. White specific signing authorities and established conditions to that authority for work, invoices and monies to be paid by AMPCO.