



**EB-2008-0227**

**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 EnWin  
Utilities Ltd. for an order approving or fixing just and  
reasonable rates and other charges for the  
distribution of electricity to be effective May 1, 2009.

**BEFORE:** Cathy Spoel  
Presiding Member

Pamela Nowina  
Member and Vice-Chair

## **DECISION AND ORDER ON COST AWARDS**

### **Background**

EnWin Utilities Ltd. ("EnWin") filed an application with the Ontario Energy Board on September 18, 2008, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the rates that it charges for electricity distribution to be effective May 1, 2009. The Board assigned File Number EB-2008-0227 to the application.

The Association of Major Power Consumers Ontario (AMPCO), the Consumers Council of Canada ("CCC"), the Canadian Manufacturers and Exporters ("CME"), the School Energy Coalition ("SEC"), and the Vulnerable Energy Consumers Coalition ("VECC") were granted intervenor status and were found to be eligible for a cost award.

The Board issued its Decision and Order on the application on April 9, 2009, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by EnWin.

The Board received cost claims from AMPCO, CCC, SEC and VECC. CME did not file a cost claim.

On May 15, 2009, the Board received objections to the cost claims from EnWin. EnWin expressed concerns that the cost award averages from Appendix A to Procedural Order No. 1 were not particularly helpful but used the data for a cost award analysis that focused on the four distributors - Oshawa PUC, Barrie Hydro, Enersource Hydro and Hydro Ottawa, comparable in size and circumstance to EnWin. EnWin proposed a total cost award of approximately \$35,327.

CCC, VECC and AMPCO noted that EnWin did not object specifically to any party's cost claims. CCC filed a reply dated May 25, 2009 and noted that EnWin had claimed that the data in Appendix A is more than a guide and that it gives rise to a formula which is binding on the Board and on intervenors. CCC stated that if EnWin knew, from the time of issuance of Procedural Order No. 1, that it was going to take the position that intervenors were limited in their cost claims to approximately \$8750 each, it should have so stated. CCC also noted that EnWin never disclosed that position when it knew that intervenors would have to review approximately 1,800 pages of material that EnWin produced in support of its application. CCC noted that each application is unique in its complexity and that each intervenor brings to the task of intervention a different level of knowledge, a different set of interests, and a different sense of what is required to properly represent their constituency. In letters filed on May 25 and May 26, 2009 respectively, VECC and AMPCO supported CCC's submissions that EnWin's analysis and argument is flawed and unfair. VECC and AMPCO stated that there is no direct correlation between the size of a utility and the complexity of a rate application.

## **Board Findings**

The Board reviewed EnWin's submissions and its proposal as well as the intervenors' submissions. The Board has indicated to all intervenors involved in the 2009 cost of service rebasing applications that it will be attentive to cost claims. This was identified in this proceeding in the Board's Procedural Order No. 1, dated November 17, 2008.

The Board agrees with intervenors that the information set out in Procedural Order No. 1 was intended to be more of a guide to the intervenors, rather than a formula to be used to determine cost awards. Each application has its own unique circumstances and complexities that require varying levels of involvement by the specific intervenors. The

Board also notes that EnWin did not specifically object to the claims of each intervenor. The Board has no basis on which it should arbitrarily reduce the cost awards of the intervenors.

The Board finds CCC, SEC and VECC are eligible for 100% of their reasonably incurred costs of participating in this proceeding. The Board finds that each party's claims are reasonable and will be reimbursed by EnWin.

While the Board does not have specific guidelines as to how much time is reasonable for a party to spend on any particular aspect of a proceeding, with respect to AMPCO's claim, the Board is concerned with the hours claimed for attendance by AMPCO's counsel and consultant at the settlement conference.

On the Board's FORM 1 Summary Statement of Hours, AMPCO has claimed a total of 68 hours for attendance at the settlement conference: 23.5 hours for senior counsel (Crocker), 23.5 hours for junior counsel (Lord) and 21 hours for a consultant (Grice). This compares to a total of 31.5 hours for VECC's counsel and consultants, 20.7 hours for SEC and 16 hours for CCC.

Furthermore, an analysis of the daily totals as submitted by AMPCO indicates that all 3 were in attendance for the entire settlement conference, whereas other intervenors had one and at times 2 representatives.

	<u>VECC</u>			<u>SEC</u>	<u>CCC</u>	<u>AMPCO</u>		
	Buonogaro	Harper	Higgin	Shepherd	Warren	Crocker	Lord	Grice
Feb 2	3.5			3.5		5	5	5
Feb 3	4.0			8.2		8	8	6
Feb 4	9.0			9.0		8.5	8.5	8.5
Total	16.5	10	5	20.7	16.0	21.5	21.5	19.5
	(VECC Total 31.5)							

In the Board's view, AMPCO's claim is excessive. One counsel and the assistance from time to time of a consultant should suffice. As it is not possible to determine which members of AMPCO's team were required from time to time, the Board will reduce the total hours to 30, allowing 10 hours for each of the 3. That removes 13 hours for David Crocker, 13 hours for Andrew Lord and 12 hours for Shelley Grice. The disbursements will be granted as claimed. The total cost award for AMPCO is therefore \$25,527.98.

**THE BOARD THEREFORE ORDERS THAT:**

1. Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, EnWin shall immediately pay:
  - CCC \$45,703.35;
  - AMPCO \$25,527.98;
  - SEC \$26,784.20; and
  - VECC \$26,377.35.
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, EnWin shall pay the Board's costs of and incidental to this proceeding immediately upon receipt of the Board's invoice.

**DATED** at Toronto, August 6, 2009.

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary