



ONTARIO ENERGY BOARD

Practice Direction

On

Cost Awards

ONTARIO ENERGY BOARD
PRACTICE DIRECTION ON COST AWARDS

1. DEFINITIONS

1.01 In this direction, words have the same meaning as in the Ontario Energy Board’s Rules of Practice and Procedure, unless otherwise defined in this section.

“Act” means the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B;

“applicant” means:

- (a) when used in connection with processes commenced by an application, a person who makes an application;
- (b) when used in connection with processes commenced by reference, Order in Council, or on the Board’s own initiative, the person(s) named by the Board to be the applicant; and
- (c) when used in connection with a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, the person(s) ordered by the Board to pay costs in accordance with section 30 of the Act;

“application” means the commencement by a party of a process before the Board;

“distributor” means a person who owns or operates a distribution system;

“generator” means a person who owns or operates a generation facility;

“IESO” means the Independent Electricity System Operator;

“intervenor” means a person who has been granted intervenor status by the Board or, for the purposes of a notice and comment process under section 45 or 70.1 of the Act or any other consultation process initiated by the Board, means a person who is participating in that process;

“marketer” means a person who markets natural gas;

“party” means the applicant, any person granted intervenor status by the Board, and any person participating in a Board process;

“process” means a process to decide a matter brought before the Board whether commenced by application, reference, Order in Council or on the Board’s own initiative (including, but not limited to, a notice and comment process under section 45 or 70.2 of the Act and any other consultation process initiated by the Board);

“retailer” means a person who retails electricity;

“Secretary” means the Board Secretary and any Assistant Board Secretary;

“Tariff” means the Cost Award Tariff contained in Appendix A to this Practice Direction on Cost Awards;

“transmitter” means a person who owns or operates a transmission system; and

“wholesaler” means a person who purchases electricity or ancillary services in the IESO-administered markets or directly from a generator or who sells electricity or ancillary services through the IESO-administered markets or directly to another person, other than a consumer.

2. COST POWERS

2.01 The Board may order any one or all of the following:

- (a) by whom and to whom any costs are to be paid;
- (b) the amount of any costs to be paid or by whom any costs are to be assessed and allowed;
- (c) when any costs are to be paid;
- (d) costs against a party where the intervention is, in the opinion of the Board, frivolous or vexatious; and
- (e) the costs of the Board to be paid by a party or parties.

3. COST ELIGIBILITY

3.01 The Board may determine whether a party is eligible or ineligible for a cost award.

3.02 The burden of establishing eligibility for a cost award is on the party applying for a cost award.

3.03 A party in a Board process is eligible to apply for a cost award where the party:

- (a) primarily represents the direct interests of consumers (e.g. ratepayers) in relation to regulated services;
- (b) primarily represents a public interest relevant to the Board’s mandate; or
- (c) is a person with an interest in land that is affected by the process.

3.04 In making a determination whether a party is eligible or ineligible, the Board may also consider any other factor the Board considers to be relevant to the public interest.

3.05 Despite section 3.03, the following parties are not eligible for a cost award:

- (a) applicants before the Board;
- (b) transmitters, wholesalers, generators, distributors, and retailers of electricity, either individually or in a group;
- (c) transmitters, distributors, and marketers of natural gas, and gas storage companies, either individually or in a group;

- (d) the IESO; and
- (e) the Ontario Power Authority.

- 3.06 Notwithstanding section 3.05, a party which falls into one of the categories listed in section 3.05 may be eligible for a cost award if it is a customer of the applicant.
- 3.07 Also notwithstanding section 3.05, the Board may, in special circumstances, find that a party which falls into one of the categories listed in section 3.05 is eligible for a cost award in a particular process.
- 3.08 The Board may, in appropriate circumstances, award an honorarium recognizing individual efforts in preparing and presenting an intervention or submission. The amount of the honorarium will be specified by the Board panel presiding.

4. COST ELIGIBILITY PROCESS

- 4.01 A party that will be requesting costs must submit its reasons as to why the party believes that it is eligible for an award of costs, addressing the Board's cost eligibility criteria (see section 3), at the time of filing of its notice of intervention or, in the case of a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, at a date specified by the Board. For information on filing and serving a request for intervention, refer to the Board's Rules of Practice and Procedure.
- 4.02 An applicant in a process will have 14 calendar days from the filing of the notice of intervention and request for cost eligibility to submit its objections to the Board, after which time the Board will rule on the intervention and request for eligibility.
- 4.03 The Board may at any time seek further information and clarification from any party that has filed a request for cost eligibility and may provide direction to such parties as to any matter that the Board may consider in determining the amount of a cost award, and, in particular, combining interventions and avoiding duplication of evidence.
- 4.04 A direction mentioned in section 4.03 may be taken into account in determining the amount of a cost award under section 5.01.

5. PRINCIPLES IN AWARDING COSTS

- 5.01 In determining the amount of a cost award to a party, 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.

6. REIMBURSEMENT FOR COSTS CLAIMED

- 6.01 Reference should be made to the Board's Tariff for approved costs.
- 6.02 Cost claims shall be made on Board-approved forms (Appendix "B").
- 6.03 The burden of establishing that the costs claimed were incurred directly and necessarily for the party's participation in the process is on the party claiming costs.
- 6.04 An individual party that has incurred a wage or salary loss as a result of participating in a hearing may recover all or part of such wage or salary loss, subject to review by the Board.
- 6.05 A party will not be compensated for time spent by its employees or officers in preparing for or attending at Board processes. When determining whether a person is an officer or employee of the party, the Board will look at the true nature of the relationship between the person and the party and the role the person performs for the party. The Board may deem the person to be an officer or employee of the party regardless of the person's title, position, or contractual status with the party. Furthermore, an employee or officer of a company or organization that is affiliated with or related to the party that is eligible for an award of costs will be deemed to be an employee or officer of the party.
- 6.06 Counsel fees will be accepted in accordance with the Board's Tariff.
- 6.07 Paralegal fees will be accepted in accordance with the Board's Tariff. To qualify for consideration as a paralegal service, a paralegal must have undertaken services normally or traditionally performed by legal counsel, thereby reducing the counsel's time spent on client affairs.
- 6.08 Where appropriate, hourly rates for Articling Students may be allowed in accordance with the Board's Tariff.
- 6.09 In-house counsel and supporting employees, including in-house paralegal and articling students respectively, will not be reimbursed for their services.

- 6.10 Consultant and case management fees will be accepted according to the Board's Tariff. A copy of the consultant's curriculum vitae must be attached to the Statement of Costs forms (Appendix "B").
- 6.11 No differentiation will be made between the rates for preparation and attendance. Travel time spent working should be claimed as preparation time with the appropriate time documented. There will be no compensation for other hours spent in travel, although reasonable disbursements for travel costs will be allowed in accordance with the Board's Tariff.
- 6.12 The Board may award costs to a party on the basis of a fixed amount per day for participation in workshops, working groups, advisory groups, technical conferences, issues conferences, settlement conferences or pre-hearing conferences.

7. DISBURSEMENTS

- 7.01 Reasonable disbursements, such as postage, photocopying, transcript costs, travel and accommodation, directly related to the party's participation in the process, will be allowed in accordance with the Board's Tariff.
- 7.02 A party may be compensated for the reasonable disbursements of an employee or officer of the party which are necessarily and directly incurred as a result of participation in a Board process.
- 7.03 Receipts, where appropriate, must be submitted with the cost claim.

8. GROUP INTERVENTIONS

- 8.01 In a case where a number of eligible parties have joined together for the purpose of a combined intervention, the Board will normally allow reasonable expenses necessary for the establishment and conduct of such a group intervention.
- 8.02 The reasonable costs of meeting room rentals and associated costs required for the formation and coordination of a group, and which are specific to the intervention, will normally be allowed. The travel costs and personal expenses of group members attending such meetings will, however, normally be excluded.
- 8.03 Attendance at a hearing should be limited to the number of representatives required to effectively monitor and provide input into the processes. When groups are not represented by counsel and/or experts, the reasonable out of pocket disbursements directly incurred for the attendance of a maximum of four group members will normally be accepted. When the group is represented by counsel and/or experts, the out of pocket disbursements incurred for the attendance of a maximum of two group members, as advisors, will normally be accepted.

9. GOODS AND SERVICE TAX ("GST")

- 9.01 A party will be compensated for the GST it pays on goods and services which are

determined by the Board to be eligible for an award of costs. The GST will be reduced by the value of directly related Input Tax Credits and Rebates.

- 9.02 The Board will not provide for GST collectible in determining the amount of the cost award.
- 9.03 To be compensated, a party shall provide the following required GST information when completing the Statement of Costs forms (Appendix “B”):
- (a) the tax status of the party, e.g. full registrant, unregistered, qualifying nonprofit, zero-rated, tax exempt, etc;
 - (b) the GST registration number, if any;
 - (c) the details of costs incurred showing the GST related to each item of cost; and
 - (d) the corresponding Input Tax Credit, GST rebate rate and GST collectible which apply to any costs paid and any awards received by the party.

10. COST CLAIMS

- 10.01 All cost claims will be subject to review by the Board for compliance with the Board’s Tariff.
- 10.02 A party, eligible to apply for an award of costs, must address the reasons why costs should be awarded, as well as submit its detailed cost claims in a Board approved format, with receipts attached, within 21 calendar days of the filing of final argument, or at a time directed by the Board. One copy is to be filed with the Board and one copy served on each of the parties from whom costs are being claimed.
- 10.03 Cost claims shall consist of the following forms (contained in Appendix “B”) and shall be provided in a clear and legible format:
- (a) **Summary Statement of Hours** (Form 1) for each consultant or lawyer, together with supporting time dockets and invoices;
 - (b) **Summary of Disbursements** (Form 2) for each consultant or lawyer, together with supporting invoices and receipts; and
 - (c) **Affidavit in Support of Cost Claim** (Form 3) verifying that the costs claimed were incurred directly and necessarily for the purpose of the process in question.
- 10.04 Where an individual party, representing himself or herself in a process, claims costs, the Board may accept the claim in the form of a letter providing details of the costs directly and necessarily incurred by the individual as a result of his or her participation in the process.

11. COST ASSESSMENT

- 11.01 The parties which the Board has determined shall pay the costs shall have 14 calendar days from the date of submission by a party claiming costs to file any objection to any aspect of the costs claimed. One copy of the objection is to be filed with the Board and one copy served on the party against whose claim the objection is being made.

- 11.02 The party claiming costs shall have 7 calendar days from the date of the filing of the objections to file a reply with the Board and to serve a copy on the payor(s).
- 11.03 The Board will then issue its Decision and Order directing to whom and by whom costs are to be paid and detailing the costs to be awarded to each party.

12. SPECIAL PROVISIONS FOR CONSULTATION PROCESSES INITIATED BY THE BOARD

- 12.01 Persons who will be ordered to pay cost awards for any consultation process initiated by the Board will be informed of their obligation at the commencement of the consultation process.
- 12.02 If the persons being ordered to pay the cost awards are part of a class of market participants who have to pay cost assessments under section 26 of the Act, the cost awards may be apportioned between the members of the class in the same manner as costs are apportioned within the class under the Board's Cost Assessment Model.
- 12.03 If the persons being ordered to pay cost awards are part of more than one class of market participants who have to pay cost assessments under section 26 of the Act, the cost awards may be apportioned between the classes in the same manner as costs are apportioned between the classes under the Board's Cost Assessment Model.
- 12.04 In some cases, the Board may act as a clearing house for all payments of cost awards in consultation processes initiated by the Board. In those cases, the persons paying the cost awards shall submit their payment to the Board in the amount prescribed by the Board's Cost Orders (as listed in the invoices sent out to all persons ordered to pay cost awards). Payments for these cost awards will be due at the same time the cost assessments are due. After the Board receives the payments from the payors, the Board will then make the proper payments to the parties receiving the cost awards (in accordance with the Board's Cost Orders).
- 12.05 Invoices for cost awards in consultation processes initiated by the Board will be sent out to market participants who have to pay cost assessments under section 26 of the Act at the same time the cost assessments are sent out.
- 12.06 The Board will not send out the invoices for the cost awards until all persons eligible to receive the cost awards have submitted their cost claims. The Board will not send out the payments for the cost awards to persons eligible to receive the cost awards until at least eighty percent (80%) of the total amount owed by the payors has been received by the Board.

13. EFFECTIVE DATE

- 13.01 This Practice Direction on Cost Awards shall come into effect on June 9, 2009.

APPENDIX “A”

COST AWARD TARIFF

NOTE: All tariffs are exclusive of applicable GST.

Legal Fees -Hourly Rates

Provider of Legal Services	Completed Years Practising	Maximum Hourly Rate
Lawyer	20+	\$330
Lawyer	11 to 19	\$290
Lawyer	6 to 10	\$230
Lawyer	0 to 5	\$170
Articling Student/Paralegal	-	\$100

Analyst/Consultant Fees -Hourly Rates

Consultants are experts in aspects of business or science such as finance, economics, accounting, engineering or the natural sciences such as geology, ecology, agronomy, etc.

Time spent providing expert evidence, providing expert professional advice to the Board, or acting as an expert witness will be compensated at the appropriate analyst/consultant rate set out in the table below. A copy of the expert’s curriculum vitae must be attached to the cost claim.

If a consultant provides case management services, these hours are to be listed separately and will be compensated at the case management rate.

Analyst/Consultant Fees (including Case Management)

Provider of Service	Years of Relevant Experience	Maximum Hourly Rate
Analyst/consultant	20+	\$330
Analyst/consultant	11 to 19	\$290
Analyst/consultant	6 to 10	\$230
Analyst/consultant	0 to 5	\$170
Case Management	-	\$170

Disbursements

Reasonable disbursements, such as postage, photocopying, transcript costs, travel and accommodation, directly related to the party's participation in the process, will be allowed. Receipts substantiating the disbursement must accompany the cost claim where possible.

1. Travel by personal automobile will be paid at the Ontario Government Rate.
2. Travel expenses, including reasonable meal and accommodation expenses will be allowed when the claimant's place of business is located at, or more than, 100 km from the site of the process.
3. Taxi, rental car and airport limousine claims will be accepted.
4. Air and rail travel will be limited to "economy" fare rates.
5. Claims for single occupancy rooms at a hotel will be accepted. This does not include "luxury" hotels or suites.
6. Reasonable meal expenses will be accepted.

APPENDIX “B”

FORM 1

SUMMARY STATEMENT OF HOURS -CONSULTANTS AND LEGAL COUNSEL

A separate form is required for each consultant or legal counsel

Board File Number		Party Name			
Legal Counsel Name		Year of Call		Law Firm	
Consultant Name		Years of Relevant Experience (curriculum vitae must be attached)		Consultant Firm	
	Hours	Hourly Rate	Sub-total	GST	Total
Preparation					
Attendance -Technical Conference					
Attendance -Settlement Conference					
Attendance -Oral Hearing					
Argument					
Case Management					
TOTALS					
Note: All claims must be in Canadian dollars. If applicable, state exchange rate _____, and country of initial currency _____.					

APPENDIX "B"

FORM 2

SUMMARY OF DISBURSEMENTS

Board File Number Party Name	
Party or Group that made the disbursement	
	Net Cost GST
Photocopies	
Printing	
Fax	
Courier	
Telephone	
Postage	
Transcripts	
Travel: Air	
Travel: Car	
Travel: Rail	
Travel: Other ()	
Taxi or Airport Limo	
Accommodation	
Meals	
Other ()	
Sub-totals	
Grand Total	
Notes 1. All claims for disbursements must include receipts where practicable. 2. All claims must be in Canadian dollars. If applicable state exchange rate _____ and country of initial currency.	

APPENDIX "B"

FORM 3

AFFIDAVIT IN SUPPORT OF COST CLAIM

Board File Number

Party Name

Items Claimed excluding GST

Legal/Consultant Fees + Disbursements = Net Sub-Total
\$ _____ \$ _____ \$ _____

Goods and Services Tax

..... Full Registrant Qualifying Non-Profit (GST at 2.5%)
..... Unregistered (GST at 5%) Tax Exempt (no GST).....
Other _____ GST at _____ %

Total Cost Claim

Net Sub-Total + Total GST Claimed = Total Cost Claim
\$ _____ \$ _____ \$ _____

I, (name) _____, of the (City, Town, etc.) _____ in the (County, Regional Municipality, etc.) of _____, **MAKE OATH AND SAY:**

1. I am a representative of the above noted party (the "party") and as such have knowledge of the matters attested to herein.
2. I have examined the above Cost Claim and all of the documentation in support of it.
3. The above Cost Claim represents only costs incurred directly and necessarily by the party for the purpose of its intervention in the Ontario Energy Board process (the file number of which is set out above).
4. The above Cost Claim does not include any costs incurred for work done, or time spent, by employees or officers of the party as described in section 6.05 of the Board's Practice Direction on Cost Awards.

SWORN (OR AFFIRMED) BEFORE ME at the (City, Town, etc.) of _____
_____, in the (County, Regional Municipality, etc.) of _____
_____ on (date) _____.

COMMISSIONER for taking Affidavits

Signature of Deponent