

April 15, 2011

VIA RESS and COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
PO Box 2319
2300 Yonge Street, Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: EB-2010-0008 – Payment Amounts for Ontario Power Generation Inc.’s
Prescribed Facilities – Cost Claims**

Ontario Power Generation (“OPG”) has completed its review of the cost claims submitted by those intervenors eligible for costs in EB-2010-0008.

Below, OPG has submissions on the general approach that it believes should apply to the assessment of all cost claims. In addition, OPG has objections to certain of the individual claims made by intervenors.

General Submissions

The OEB’s *Practice Direction on Cost Awards* (the “Practice Direction”) with respect to Disbursements provides that, “6. Reasonable meal expenses will be accepted.” The question for the OEB is therefore: What is the appropriate standard for assessing the reasonableness of these expenses?

Recently, and in response to significant public concern, the Government of Ontario announced that the broader public sector would be required to adhere to a common set of standards for assessing meal and other related expenses. Both the OEB and OPG must comply with this standard, the *Travel, Meal and Hospitality Expenses Directive* (the “Directive”) issued by the Management Board of Cabinet.

The OEB’s own website describes the Directive (a link is provided on the OEB website) as follows:

2.0 Principles

- Taxpayer dollars are used prudently and responsibly with a focus on accountability and transparency.
- Expenses for travel, meals and hospitality support government objectives.

- Plans for travel, meals accommodation and hospitality are necessary and economical with due regard for health and safety.

OPG submits that the OEB ought to apply the standards set out in the Directive when assessing intervenors' cost claims. This would ensure that travel, meal and hospitality expenses that impact ratepayers are held to the same standards as those that impact taxpayers.

Application of this standard would mean that no alcohol would be claimed as part of the cost claims and that the OEB would adopt the maximum rates set out in the Directive for meal expenses. The OEB already seems to have adopted the mileage rates set out in the Directive (described in the Practice Direction as the Ontario Government Rate) in assessing intervenors' cost claims. Adopting the balance of the Directive would therefore simply extend an existing practice.

With respect to the fees claimed by the intervenors for counsel and consultants, as a general comment, OPG notes that in much of the oral hearing and argument stages of the proceeding, intervenors relied on the cross-examinations and legal arguments put forward by OEB staff. This notwithstanding, the total of intervenor hours submitted for reimbursement for preparation, oral hearing and argument totals nearly 4,000 hours.

The sum of hours claimed by intervenors seems high, particularly given that throughout the oral hearing and argument stages of the proceeding the advocated positions of OEB staff and intervenors were very much aligned. OPG submits that intervenors should be encouraged by the OEB to work cooperatively to reduce the costs to ratepayers.

Additionally, should OEB staff's role move beyond that of promoting the public interest and consistently include adopting an adversarial position (as OPG's Reply Argument posited the OEB staff did in this proceeding), intervenors and OEB staff should be encouraged to work cooperatively through the preparation, oral hearing and argument stages of a proceeding. The effect should then be a substantial reduction in the total costs claimed.

Consumers Council of Canada, School Energy Coalition and the Vulnerable Energy Consumers Coalition

OPG has no objections to the claims submitted by Consumers Council of Canada, School Energy Coalition and the Vulnerable Energy Consumers Coalition.

AMPCO

The Practice Direction with respect to Disbursements provides that, "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."

As AMPCO's counsel and consultants are located within 100 km of 2300 Yonge Street, OPG submits that AMPCO's claim for \$160.57 for food expenses should be disallowed.

Canadian Manufacturers & Exporters

With respect to the cost claim filed by CME, OPG submits that the time claimed for its three lawyers (including some time for Mr. Hughes at a more senior rate of \$230/hour), for a total of approximately 666 hours is excessive and should be reduced.

OPG submits that CME's almost singular focus in the proceeding was with respect to the issue of total bill impacts, and much of CME's cross-examination of OPG witnesses was repetitive in the main and specific to this topic only. This issue was also the focus of CME's argument, though CME did make written submissions with respect to the tax loss variance account. However, on this second issue, the OEB's finding with respect to CME's submission was to reject it completely on the basis that CME was attempting to re-argue points from the previous OPG proceeding (p. 136).

With respect to fee costs claimed for Mr. Sharp, his case management costs are claimed at \$235/hour rather than the \$170/hour provided in the Practice Direction. OPG submits that the CME claim is overstated by \$183.63 in this regard. With respect to CME disbursements, the claim of \$11.95 for reimbursement of alcohol should be disallowed consistent with the guidelines set out in the Directive.

Energy Probe

With respect to the cost claim submitted by Energy Probe, OPG submits that the number of hours claimed for Dr. Schwartz is not commensurate with the value provided by his participation. He did not prepare any written evidence and the OEB made no reference to his submissions in their findings. Energy Probe's cost claim includes seven hours for Dr. Schwartz' participation in the Settlement Conference and OPG sees no reason for an expert on cost of capital to have participated in the Settlement Conference and notes that no other expert participated. OPG submits that Energy Probe's claim for Dr. Schwartz' participation in the Settlement Conference should be disallowed and the allowable hours for Dr. Schwartz' preparation should be reduced.

Green Energy Coalition

With respect to the cost claim by GEC, OPG submits that its meal expense claims are unreasonable. Two examples of this are a claim for dinner on October 31, 2010 for \$50.00 and lunch on November 25, 2010 for \$23.11. These claims exceed the guidelines in the Directive.

As part of GEC's fee claim, GEC has sought 133.5 hours of Mr. Paul Chernick's preparation time for a total \$33,375. OPG submits that the OEB should assess this part of GEC's claim by having particular regard to Section 5.01(f) of the Practice Direction. This sub-section provides that the OEB may consider whether the party "contributed to a better understanding by the Board of one or more of the issues addressed by the party."

OPG submits that Mr. Chernick's contribution to this proceeding was minimal. In the Decision, the OEB summarized the PWU's submission on Mr. Chernick's evidence as "a re-argument of matters decided in the Report [*Regulatory Treatment of Infrastructure Investment in connection with the Rate-regulated Activities of Distributors and Transmitters in Ontario*, dated July 15, 2010] rather than a consideration of the merits of the case presented by OPG" (p. 76). OPG shares that view. Additionally, OPG submits that Mr. Chernick's opinion evidence on the applicability of the Report to OPG was completely wrong. In its findings in the Decision the OEB stated: "The Board finds that the Report is clear that the policy could apply in other circumstances beyond the Green Energy Act and beyond transmission and distribution infrastructure". (p. 78)

With respect to much of the balance of Mr. Chernick's evidence on the issue of CWIP for the Darlington Refurbishment Project, the OEB instead decided the issue on the

basis that OPG's request for CWIP is premature and that it expects additional evidence from OPG (pp. 78-79).

OPG submits that GEC's claim for Mr. Chernick's evidence should be reduced to reflect the OEB's consideration of the contribution it made to the understanding of the CWIP and cost of capital issues.

Pollution Probe

With respect to the cost claim filed by Pollution Probe, OPG submits that there should be a partial denial of the claim for the time of Drs. Kryzanowski and Roberts. Simply put, in the Decision, the OEB made a finding that their evidence "largely employed the same techniques as contained in their evidence in the previous case" (p. 116). The OEB also specifically found that the evidence in this proceeding did not provide a sufficiently robust basis to set technology-specific costs of capital, by way of division-specific capital structures (p.116). This is what the Pollution Probe expert evidence purported to refute. Having regard to the contribution the evidence from Pollution Probe made to understanding the issue and the fact that the Pollution Probe expert evidence was largely a repeat of its evidence in the last OPG payment amounts case, there should be a reduction in the amount of the Pollution Probe claim that is allowed.

In addition, OPG notes that the total legal/consultant fees (excluding HST) are inaccurately tabulated resulting in an overclaim of \$4,675.58. In addition, the claim includes inaccurate HST calculations for Mr. Jack Gibbons which result in an overclaim of \$80.26. The total adjustment for these errors resulted in a total overclaim of \$4,755.84 by Pollution Probe.

Yours truly,

[Original signed by]

Barbara Reuber

cc. EB-2010-0008 Intervenors (email)
Charles Keizer (email)
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