



**EB-2011-0144**

**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 Toronto  
Hydro-Electric System Limited for an order approving just  
and reasonable rates and other charges for electricity  
distribution to be effective May 1, 2012, May 1, 2013 and  
May 1, 2014.

**BEFORE:** Cynthia Chaplin  
Vice-Chair and Presiding Member

Paula Conboy  
Member

Marika Hare  
Member

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

### **Background**

Toronto Hydro-Electric System Limited ("THESL") filed an application with the Ontario Energy Board (the "Board") on August 26, 2011 under section 78 of the Ontario Energy Board Act, 1998, (the "Act") seeking approval for changes to the rates that THESL charges for electricity distribution, to be effective May 1, 2012, May 1, 2013 and May 1, 2014. The Board assigned the application file number EB-2011-0144.

The Board received 11 requests for intervenor status and five requests for observer status.

On October 4, 2011, the Board issued its Procedural Order No. 1, granting the Association of Major Power Consumers in Ontario ("AMPCO"); Building Owners and Managers Association Toronto ("BOMA"), Consumers Council of Canada ("CCC"), Energy Probe Research Foundation ("Energy Probe"), Pollution Probe, the School Energy Coalition ("SEC") and the Vulnerable Energy Consumers Coalition ("VECC") intervenor status and cost award eligibility.

The Board issued its Decision with Reasons and Order on the Preliminary Issue on January 5, 2012, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by THESL.

The Board received cost claims from AMPCO, BOMA, CCC, Energy Probe, Pollution Probe, SEC and VECC.

On February 1, 2012, THESL filed a letter with the Board outlining its objections to these cost claims. THESL noted that the Board had established in Procedural Order No. 1 criteria to be used in its assessment of claims that may be made for cost awards by intervenors determined to be eligible for cost awards in this proceeding and framed its objections in the context of these criteria.

THESL first noted that on the subject of disbursements, the Board had stated in part that "given the widespread availability and use of electronic documents, it is no longer reasonable for intervenors to make claims for the recovery of costs of copying or printing case documents, other than materials that are filed for use during the hearing."

THESL observed that notwithstanding the Board's position on the subject of disbursements in this proceeding, BOMA and CCC had claimed costs for photocopies and binding that THESL was unable to link to any materials filed for use during the hearing. THESL, accordingly, submitted that the related costs were improperly claimed and requested that the Board deny them.

THESL further noted that in Procedural Order No.1, the Board had stated its expectation that:

...where cost claims for oral hearing days are concerned, intervenors will generally only claim costs for one representative present in the hearing room, either counsel or an analyst/consultant, but not both. The Board would generally allow costs for more than one representative only to facilitate cross-examination of certain specialized evidence.

THESL objected that, despite the Board's clear expectations, SEC had chosen to seek reimbursement of costs for the attendance of two SEC representatives. THESL submitted that only costs claimed for one SEC representative should be allowed and requested that the Board deny costs claimed in excess of those provided for.

THESL further stated that a review of the number of hours claimed by each intervenor has established that the number of hours claimed by SEC for preparation alone was more than twice that claimed by any intervenor and the number of hours claimed by SEC overall was almost double those claimed by the intervenor with the next highest involvement (CCC). THESL submitted that the number of hours claimed by SEC was unreasonable and requested that the Board so find and reflect this in its Decision on Cost Awards in this proceeding.

On February 2, 2012, SEC replied to THESL's objections to the costs claimed. SEC stated that with respect to Mr. Rubenstein attending oral hearing days when lead counsel was also attending, Mr. Rubenstein only attended part of one actual hearing day, the part during which SEC's cross-examination of the Applicant's witnesses took place. SEC further stated that the other three days were attendance with respect to final argument. SEC submitted that in this case, argument was done orally, so it involved attending hearing days and this did not appear to be what the Board had intended in Procedural Order No. 1 when it addressed the issue of one individual at a time attending the oral hearing.

SEC acknowledged that the same might not be true regarding attendance for the Reply Argument as at that point there was nothing SEC could really do. SEC stated that while it was legitimate for one person to attend in case legal issues arise in the reply argument that have to be spoken to, the second attendee may not have been necessary. SEC further stated that it had considered this aspect in filing its claim, but had decided not to write off the hours because it was a small number and given the high level of interest in the case, it was reasonable for all those involved to either hear or

read the reply. SEC, however, acknowledged that it could see that the opposite view might also be reasonable.

SEC noted THESL's objection that its hours were much higher than those of any other intervenor and argued that it had provided value to the Board consistent with the hours claimed, pointing out four areas where it believed this had been the case:

1. SEC stated that it has been active for the last three years exploring the ways in which Yearbook information can be used to diagnose possible strengths and weaknesses of individual utilities including in this case expansion of its existing set of comparative models to ensure that THESL's claims were reviewed from as many perspectives as possible;
2. Developing a model to test the allegation that IRM limits capital spending to the depreciation amount baked into rates;
3. Researching case precedents where IRM was challenged in other jurisdictions which while it did not have to be used, because THESL ultimately clarified its position on this point was necessary work in light of the application;
4. Identifying a top productivity expert who would have needed to have been quickly retained by intervenors in the event that the Board's Decision had been to allow the application to proceed.

On February 8, 2012, CCC replied to THESL's objections to the costs claimed, arguing that its claims were valid. CCC stated that it had incurred these costs as it was not always expedient to review case documents electronically. CCC argued that requiring all materials to be read in electronic form puts an unreasonable constraint on the ability of counsel to participate effectively in a proceeding and that some paper copies are required to allow preparation.

BOMA did not respond to THESL's objections to its claimed costs for photocopies and binding.

## Board Findings

The Board has reviewed the claims filed by AMPCO, BOMA, CCC, Energy Probe, Pollution Probe, SEC and VECC to ensure that they are compliant with the *Board's Practice Direction on Cost Awards*.

The Board notes that it is a requirement to provide receipts for all expenses which must agree with the amounts on the cost claims. In the absence of receipts a detailed explanation is required.

The Board has disallowed those claims where intervenors have not provided the necessary receipts or adequate reasons and has adjusted such claims where the amounts of the claims are different from those on the receipts.

The Board has also reviewed the calculations provided by intervenors and where necessary has made corrections to these calculations.

Based on these considerations, the criteria outlined in Procedural Order No. 1 and the submissions made by THESL and reply submissions by SEC and CCC, the Board has determined the appropriate cost awards for each intervenor. Where the Board has adjusted or disallowed cost claims, the reasons for doing so are provided in the following sections.

### AMPCO

The Board notes that, as has been referenced earlier, Procedural Order No. 1 states that where cost claims for oral hearing days are concerned, intervenors will generally only claim costs for one representative present in the hearing room.

The Board further notes in this context that costs for both Mr. Crocker and Ms. Grice are being claimed for attendance at the oral hearing. The Board will accordingly disallow the five hours of costs claimed for the attendance of Ms. Grice at the oral hearing.

AMPCO's cost claim also includes photocopying charges (\$127.13) not supported by receipts. Given the Board's expectations around document printing, this amount is disallowed and the Board has made an adjustment to remove it. The Board therefore finds that AMPCO is awarded a total amount of \$19,661.38.

BOMA

The Board notes that, as has been referenced earlier, Procedural Order No. 1 states that it is no longer reasonable for intervenors to make claims for the recovery of costs of copying or printing case documents, other than materials that are filed for use during the hearing.

The Board further notes that BOMA's cost claim includes photocopying charges (\$2,301.13) and printing charges (\$169.84) for which BOMA has not provided receipts.

The Board disallows the photocopying costs on the basis that these expenses do not meet the criteria outlined in Procedural Order No. 1.

The Board also notes that the disbursement receipts for courier charges and computer search charges do not match with the amounts claimed. The Board has therefore made adjustments to match the disbursement receipts. The Board finds that BOMA is awarded \$24,373.04.

CCC

For the same reasons noted above for BOMA, the Board will disallow the costs claimed by CCC for photocopying charges in the amount of \$67.44. The Board finds that CCC is awarded \$30,037.11.

Energy Probe

The Board notes that Energy Probe is claiming costs for attendance at the oral hearing of both Mr. Faye and Mr. MacIntosh. For the same reasons as outlined in the findings related to AMPCO's cost claim, the Board will reduce Energy Probe's cost claims to remove the four hours claimed for Mr. MacIntosh's attendance at the oral hearing. The Board therefore awards Energy Probe a total amount of \$10,757.89.

Pollution Probe

The Board has determined that the cost claim as filed by Pollution Probe is in accordance with the Practice Direction on Cost Awards and finds that Pollution Probe is awarded \$494.10.

SEC

As was the case with AMPCO and Energy Probe, SEC claimed costs for the attendance of more than one representative in the hearing room at the same time. The Board will accordingly reduce the costs claimed for Mr. Rubenstein by four hours.

The Board does not agree with THESL's submission that the number of hours claimed by SEC was unreasonable as the Board considers that SEC added value to the proceeding through its analysis and that its claim is commensurate with the value provided.

After making the referenced downward adjustments the Board finds that SEC is awarded a total amount of \$43,190.00.

VECC:

The Board notes that due to a calculation error when calculating Form 3, the Board has adjusted VECC's cost claim and finds that VECC is awarded a total revised claim of \$12,442.40.

The Board finds that all parties are eligible for 100% of their reasonably incurred costs of participating in this proceeding subject to the adjustments referenced above. The Board finds that each party's claims, adjusted as described above, are reasonable and should be reimbursed by THESL.

**THE BOARD THEREFORE ORDERS THAT:**

1. Pursuant to section 30 of the Ontario *Energy Board Act*, 1998, THESL shall immediately pay:

- Association of Major Power Consumers in Ontario \$19,661.38;
- Building Owners and Managers Association Toronto \$24,373.04;
- Consumers Council of Canada \$30,037.11;
- Energy Probe Research Foundation \$10,757.89;
- Pollution Probe \$ 494.10;
- School Energy Coalition \$43,190.00; and
- Vulnerable Energy Consumers Coalition \$12,442.40.

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

**DATED** at Toronto, March 2, 2012.

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary