

ONTARIO ENERGY BOARD

ASSOCIATION OF MAJOR POWER
CONSUMERS OF ONTARIO (AMPCO)

NOTICE OF MOTION

For Review of Decision and Order
on Cost Awards in EB-2018-0085

IN THIS MOTION AMPCO seeks review by the Board of its Decision and Order on Cost Awards (*Costs Decision*) in EB-2018-0085 (*OPG Motion*), and variance of the *Costs Decision* to award AMPCO additional costs incurred for 0.6 hours of time spent by legal counsel in reviewing the Board's decision and order on the *OPG Motion*, which costs were disallowed in the *Costs Decision*.

THE GROUNDS FOR THIS MOTION are:

1. In determining that a reduction of AMPCO's claim (and similarly those of the Canadian Manufacturers and Exporters (CME) and the School Energy Coalition (SEC)) was warranted the *Costs Decision* Hearing Panel noted:

"... cost awards will not be granted for activities after the Decision was issued. A proceeding is closed with the issuance of a Decision. This is consistent with the OEB's decision in the EB-2017-0364 proceeding."
2. The foregoing statement is in error, in that:
 - (a) There is no basis for the statement in the Board's cost awards policy, as articulated through the Board's *Practice Direction on Cost Awards*, to award an eligible party

its reasonably incurred costs “*incurred directly and necessarily for the party’s participation in [a Board] process*”.

- (b) The overwhelming weight of “precedent” from hundreds of Board costs decisions, and thus the reasonable expectations of participants in Board proceedings, is that costs reasonably incurred for review of, and reporting on, Board decisions are eligible for recovery.
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- 3. Sound regulatory practice, including the awarding of costs in order to facilitate accessibility to the Board’s processes for those directly affected by the Board’s decisions (which includes, in particular, ratepayers such as those represented by AMPCO, and by CME and SEC), commends facilitating the ability of such parties, through their legal and otherwise mandated and accepted representatives, to understand, and be guided by, regulatory outcomes (i.e. decisions).
 - 4. In light of the Board’s longstanding cost awards policy and practice, AMPCO did not have notice that the Board would consider reduction of costs claimed on the basis that costs incurred for activities after the decision would be considered ineligible, and thus had no opportunity to provide submissions on the appropriateness of such a finding, in breach of the principles of; i) fairness; ii) the right to know the case to be met and to be heard thereon; and iii) regulatory accessibility for interested and directly affected parties, including in particular ratepayers. AMPCO seeks to provide such submissions through this motion.
 - 5. Rule 41.01 of the Board’s *Rules of Practice and Procedure* which provides the Board with the authority to review its own orders or decisions at any time, and to vary such orders or decisions.
 - 6. Rule 40 of the Board’s *Rules of Practice and Procedure* which provides that any person may bring a motion requesting the Board to review and vary all or part of a final order or decision.
 - 7. The importance of the principles raised by this motion to responsible and effective ongoing participation in the Board’s proceedings by directly interested and impacted cost eligible

parties, including in particular ratepayers, and thus to the Board's own processes and mandate and the broader public interest in accessible and acceptable regulatory processes and outcomes.

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Ian Mondrow, Partner
GOWLING WLG (CANADA) LLP
Suite 1600, 1 First Canadian Place
100 King Street West
Toronto, Ontario
M5X 1G5

Phone: 416-369-4670
E-Mail: ian.mondrow@gowlingwlg.com

Counsel to AMPCO

TO: Saba Zadeh (OPG)
TO: Charles Keizer (Torys LLP, Counsel to OPG)
TO: Crawford Smith (Torys LLP, Counsel to OPG)
TO: Intervenors of Record (EB-2018-0085)

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