

ONTARIO ENERGY BOARD

**Motion by the Association of Major Power Consumers of Ontario (AMPCO)
for Review of Decision and Order on Cost Awards in EB-2018-0085**

AMPCO

REPLY SUBMISSION

1. OEB Staff has filed submissions recommending denial of AMPCO's motion for amendment of the Board's Decision and Order on Cost Awards (Costs Decision) in relation to OPG's motion for review and variance in its 2017-2021 payments case.
2. OEB Staff's submissions are, essentially, that the test on this motion is whether the Costs Decision Hearing Panel's decision to deny AMPCO recovery of \$223.74 in costs (inclusive of GST) for counsel's time in reviewing and reporting on the decision on OPG's motion was "not unreasonable". In support of its position that the Costs Decision in this respect *"falls within the realm of reasonable possible outcomes and therefore should not be overturned"* Staff cites one other decision of the Board made in April, 2016 in which an OEB Hearing Panel denied costs for 0.2 hours of counsel's time on the basis that the Hearing Panel *"does not find that the reading of a final decision provides any value to the panel and therefore will disallow the corresponding amount"*.
3. The Hearing Panel on the Costs Decision did not deny AMPCO's claim for costs for 0.6 hours for review of and reporting on the decision on the motion on the basis that such time did not assist the Board.
4. As AMPCO has emphasized in both in its initial (October 25, 2018) submissions (Initial Submissions)¹ and its supplementary (February 25, 2019) submissions (Supplementary Submissions)², no concern was expressed in the Costs Decision regarding the

¹ Paragraphs 25 – 26.

² Paragraphs 6-7.

appropriateness of the time spent by AMPCO's counsel in reviewing the OPG Motion decision.

5. The sole basis identified by the Hearing Panel herein for denial of costs for this modest amount of time was a generic (rather than a case specific) finding that *"cost awards will not be granted for activities after the Decision was issued"*.
6. The overwhelming weight of this Board's historical costs decisions indicates that this basis is incorrect.
7. ***The sole issue raised on this motion is whether time spent reviewing a Board decision is eligible for cost recovery.***
8. Board Staff has not even addressed this issue.
9. We have already addressed this issue extensively, and refer to and adopt AMPCO's Initial Submissions and Supplementary Submissions in this respect.
10. Those previous submissions illustrate that the Costs Decision in this case was unreasonable, in light of:
 - (a) The policy of this Board to allow recovery of reasonable costs for review of, and reporting on, decisions, as reflected in hundreds of costs decisions over the years, and the abrupt and unexplained departure from this policy in the decision in issue on this motion.
 - (b) Sound regulatory practice.
 - (c) The law on the importance to a party to a regulatory proceeding of the reasoned decisions in that proceeding, and the self-evident logic that such reasoned decisions can hardly be of value to the party without review and understanding of them.
11. Staff has not addressed any of these submissions. Rather they rely on one, isolated finding of a panel of the Board in April, 2015, which finding is in fact dissonant with the Board's policy as has otherwise been uniformly applied, sound regulatory practice, and the law.
12. The Costs Decision Hearing Panel's determination to disallow AMPCO's claim for recovery of costs for 0.6 hours of counsel's time reviewing and reporting on the decision on OPG's motion, which decision directly and materially impacted AMPCO's members

and all other Ontario electricity customers, was, with respect, an unreasonable and unexplained departure from the Board's cost award policy, not a supported reasoned and reasonable exercise of discretion.

13. The denial of eligibility for recovery of the small amount of costs in issue would, if it stands, represent a reversal of the Board's longstanding practice, a practice which is appropriate both as a matter of law and as a matter of sound regulatory practice. To conclude that reviewing and understanding the outcome of the process is not a legitimate part of AMPCO's access to, and responsible participation in, the process is, with great respect, unreasonable.
14. AMPCO reiterates its request for variation of the Costs Decision to allow recovery of its very modest costs in support of such access to, and responsible participation in, the subject process and the Board's future processes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:



GOWLING WLG (CANADA) LLP, per:

Ian A. Mondrow
Counsel to AMPCO

March 8, 2019

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