

**Daliana Coban**

Director, Regulatory Applications  
and Business Support  
Toronto Hydro-Electric System Limited  
14 Carlton Street  
Toronto, ON M5B 1K5

Telephone: 416.542.2627  
Facsimile: 416.542.3024

[regulatoryaffairs@torontohydro.com](mailto:regulatoryaffairs@torontohydro.com)  
[www.torontohydro.com](http://www.torontohydro.com)



March 18, 2020

via RESS

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
PO Box 2319  
2300 Yonge Street, 27th floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: EB-2018-0165, Toronto Hydro-Electric System Limited ("Toronto Hydro"), 2020-2024 Custom Incentive Rate-setting ("Custom IR") Application – Cost Claim Objection**

---

Please find enclosed Toronto Hydro's objections to the claimed costs.

Respectfully,

A handwritten signature in black ink, appearing to read "D Coban", written over a horizontal line.

**Daliana Coban**

Director, Regulatory Applications and Business Support  
Toronto Hydro-Electric System Limited

cc: Lawrie Gluck, OEB Case Manager  
Michael Millar, OEB Counsel  
Parties of Record  
Amanda Klein, Toronto Hydro  
Charles Keizer, Torys LLP

## 1.0 INTRODUCTION

Toronto Hydro-Electric System Limited (“**Toronto Hydro**”) filed a five-year Custom Incentive Rate-setting (“**Custom IR**”) application with the Ontario Energy Board (“**OEB**”) seeking approval for changes to its distribution rates, to be effective January 1, 2020 to December 31, 2024 (“**Application**”).

The OEB granted the following parties intervenor status in the Application with eligibility for cost awards:<sup>1</sup>

- Association of Major Power Consumers (“**AMPCO**”);
- Building Owners and Managers Association (“**BOMA**”);
- Consumers Council of Canada (“**CCC**”);
- Distributed Resource Coalition (“**DRC**”);
- Energy Probe Research Foundation (“**Energy Probe**”);
- Greater Toronto Apartment Association (“**GTAA**”);
- Mr. Norman Hann (“**Mr. Hann**”);
- School Energy Coalition (“**SEC**”); and
- Vulnerable Energy Consumers Coalition (“**VECC**”).

In its Decision and Rate Order issued on February 20, 2020, the OEB directed eligible intervenors to file their cost claims by March 5, 2020.<sup>2</sup> Toronto Hydro received cost claims from GTAA, VECC, BOMA, SEC, CCC, and AMPCO on or before the March 5, 2020 deadline. DRC, Energy Probe, and Mr. Hann submitted their cost claims after the March 5 deadline.

Toronto Hydro has no objections to the claims made by GTAA, VECC, BOMA, SEC, CCC, and AMPCO. The submissions that follow challenge the cost claims of DRC, Energy Probe, and Mr. Hann.

## 2.0 GOVERNING PRINCIPLES

Cost awards promote responsible stakeholder participation in OEB processes and are important to ensure that substantial interests are adequately represented in OEB applications. However, as set out in the OEB’s *Practice Direction on Costs Awards*, a key consideration in awarding costs is whether an intervenor participated responsibly and contributed to a better understanding by

---

<sup>1</sup> Procedural Order No. 1 (October 25, 2018) at page 2; OEB Intervenor Request Letter - Reply to Mr. Hann (November 27, 2018); OEB Intervenor Request Letter - Reply to GTAA (January 3, 2019).

<sup>2</sup> EB-2018-0165, Decision and Rate Order (February 20, 2020) at page 6.

the OEB of the relevant issues in the proceeding.<sup>3</sup> This approach ensures that ratepayers will not be harmed by funding activities or interventions that do not materially contribute to the OEB's understanding and resolution of the issues in a proceeding. It also reflects the principle of proportionality in balancing the interests of enabling responsible and valuable interventions while protecting ratepayers from subsidizing inefficient or unnecessary costs.

The principle that costs awarded should be proportionate to the contributions made by the party seeking costs in the proceeding underpins the considerations in section 5.01 of the OEB's *Practice Direction on Costs Awards*:<sup>4</sup>

In determining the amount of a cost award to a party, the Board may consider, amongst other things, whether the party has demonstrated through its participation and documented in its cost claim that it has:

- (a) participated responsibly in the process;
- (b) contributed to a better understanding by the Board of one or more of the issues in the process;
- (c) complied with the Board's orders, rules, codes, guidelines, filing requirements and section 3.03.1 of this Practice Direction with respect to frequent intervenors, and any directions of the Board;
- (d) made reasonable efforts to combine its intervention with that of one or more similarly interested parties, and to co-operate with all other parties;
- (e) made reasonable efforts to ensure that its participation in the process, including its evidence, interrogatories and cross-examination, was not unduly repetitive and was focused on relevant and material issues;
- (f) engaged in any conduct that tended to lengthen the process unnecessarily;  
or
- (g) engaged in any conduct which the Board considers inappropriate or irresponsible.

With regard to these considerations, and for the detailed reasons articulated below, Toronto Hydro objects to the cost claims submitted by DRC, Energy Probe, and Mr. Hann.

---

<sup>3</sup> Practice Direction on Costs Awards (April 24, 2014), s 5.01 at pages 5-6.

<sup>4</sup> Practice Direction on Costs Awards (April 24, 2014), s 5.01 at pages 5-6.

### 3.0 DRC COST CLAIM

Toronto Hydro respectfully submits that DRC's claim is disproportionate to the narrow scope of DRC's interest in and contribution to the Application as compared to other intervenors. Specifically, DRC's cost claim of \$133,453.37<sup>5</sup> exceeds the average claim of \$111,443.05 as among all of the intervenors. Moreover, DRC's claim is on par with (and in some instances higher than) the claims made by other parties (BOMA, AMPCO, SEC, VECC, and CCC) whose interventions had a much broader scope in the proceeding and who contributed to exploring all of the material and relevant issues in the Application.

DRC expressly acknowledged its limited interest in the proceeding in its Notice of Intervention dated October 16, 2018. Specifically, DRC confirmed that, if granted intervenor status, its participation would focus on only a handful of issues related to DERs.<sup>6</sup> In contrast with other intervenors (AMPCO, SEC, BOMA, VECC, and CCC) who represent ratepayers that have a broad interest in the Application, DRC's role as intervenor was, in its own words, to provide the OEB with the *"unique perspective of DER residential customers, small commercial and industrial customers, as well as DER-related non-profit organizations, owners, and developers."*<sup>7</sup>

DRC notes in its costs claim that it *"made reasonable efforts to ensure that its participation in the hearing was focused on material issues"* and that it took a *"surgical, principled, and coordinated approach"* in addressing those issues.<sup>8</sup> Respectfully, Toronto Hydro submits that DRC's cost claim does not reflect such an approach. Rather, DRC seeks costs at a level commensurate with, or higher than, other intervenors (BOMA, SEC, AMPCO, CCC, and VECC)<sup>9</sup> whose contributions assisted the OEB in exploring all of the relevant and material issues on the OEB-approved Issues List. Toronto Hydro respectfully submits that the OEB should reduce the cost award to DRC to reflect DRC's proportionate contribution to the proceeding.

### 4.0 ENERGY PROBE'S COST CLAIM

Energy Probe claims \$140,606.59 in costs.<sup>10</sup> Toronto Hydro submits that this claim is disproportionate to Energy Probe's contribution to the Application, as demonstrated by the substantial and unexplained increase from the costs awarded to Energy Probe in EB-2014-0116, Toronto Hydro's previous Custom IR application (the **"2015 Application"**).<sup>11</sup>

---

<sup>5</sup> DRC Cost Claim (March 9, 2020).

<sup>6</sup> DRC Intervenor Request Letter (October 16, 2018) at page 2.

<sup>7</sup> DRC Intervenor Request Letter (October 16, 2018) at page 3.

<sup>8</sup> DRC Cost Claim (March 9, 2020) at page 2.

<sup>9</sup> Please see Appendix A of this Submission.

<sup>10</sup> Energy Probe Cost Claim (March 9, 2020).

<sup>11</sup> Please see Appendix A of this Submission.

A key aspect of responsible participation in OEB proceedings is participating efficiently and cost effectively wherever possible. In this proceeding, many intervenors were able to draw on their experience from the 2015 Application to streamline their efforts and reduce costs. In fact, among intervenors who participated in both the 2015 Application and the current Application (excluding Energy Probe), the costs claimed in the current Application are approximately 28% lower than those claimed in the 2015 Application, and 18% lower than those ultimately awarded in the 2015 Application.<sup>12</sup>

Energy Probe is the sole intervenor seeking more costs in the current Application. The requested increase is not marginal; Energy Probe's claim in this Application is 78% higher than its claim in the 2015 Application. What's more is that Energy Probe's purported cost increase is not justified by a greater contribution to the proceeding nor a wider scope of intervention than in the 2015 Application. To the contrary, Energy Probe played largely the same role and represented the same interests in both proceedings.<sup>13</sup>

Toronto Hydro respectfully submits that the OEB should reduce Energy Probe's costs award to reflect a decrease from the 2015 Application, or at the very least be commensurate with the costs that the OEB awarded Energy Probe in that application.

## **5.0 MR. HANN'S COST CLAIM**

Mr. Hann claims a total of \$96,071.66 in costs in this proceeding at the OEB consultant/expert rate of \$330 per hour.<sup>14</sup> However, the OEB was clear in granting him intervenor status that his participation would be as "*an individual representing his own interests*" and not as an expert or consultant. The OEB's characterization is highly relevant because it carries cost consequences in this Application<sup>15</sup> and precedential value for individuals who may be looking to self-represent in other applications.

As the OEB pointed out to Mr. Hann in its November 27, 2018 letter, section 6.04 of the *Practice Direction on Cost Awards* restricts the types of costs and disbursements that an individual such as Mr. Hann may claim in OEB proceedings. In particular, "*while wage or salary losses incurred as a result of participating in an OEB hearing, may be claimed, legal or*

---

<sup>12</sup> *Ibid.*

<sup>13</sup> Toronto Hydro observes that Energy Probe's Statement of Interest in its application for intervenor status in this proceeding was nearly identical to its Statement of Interest in the 2015 CIR Application. See EB-2014-0116, Energy Probe Intervenor Request Letter (September 9, 2014) and EB-2018-0165, Energy Probe Intervenor Request Letter (October 4, 2018).

<sup>14</sup> Mr. Hann Cost Claim (March 11, 2020).

<sup>15</sup> See, for example, EB-2010-0102, Decision and Order on Costs Award (May 11, 2011) at page 3.

*consultant fees are not generally permitted to be claimed by individuals under the OEB's Cost Award Tariff.*<sup>16</sup>

Despite the individual nature of his participation, Mr. Hann's claim exceeds the claims of other intervenors, like VECC and CCC,<sup>17</sup> who focused on all the relevant and material issues in the Application and contributed to a better understanding of all these issues in the proceeding. Even if Mr. Hann is entitled to costs as an expert (which, in Toronto Hydro's respectful view, he is not), Toronto Hydro submits that any award should be substantially reduced to reflect Mr. Hann's proportionate contribution to the proceeding.

**- All of which is respectfully submitted. -**

---

<sup>16</sup> OEB Intervenor Request letter - Reply to Mr. Hann (November 27, 2018).

<sup>17</sup> Please see Appendix A of this Submission.

## APPENDIX A: COST CLAIM COMPARISON

The figure below compares costs claimed and approved in 2015 Custom IR Application (EB-2014-0116) with the costs claims by intervenor in the current Application (EB-2018-0165). This information supports the objections raised in Toronto Hydro’s cost claim submission.

