

February 24, 2022

VIA RESS

Ms. Nancy Marconi
Registrar
Ontario Energy Board
27th Floor - 2300 Yonge Street
Toronto, Ontario M4P 1E4

Dear Ms. Marconi:

**Re: Application by Ontario Power Generation Inc. for 2022-2026 Payment
Amounts (EB-2020-0290) – Submissions on Intervenor Cost Awards**

The OEB directed eligible intervenors to file their cost claims by February 17, 2022, and OPG to respond with any objections by February 24, 2022.

In aggregate, intervenors' cost claims total almost \$1 million. The total cost claim for this application is lower than the total EB-2016-0152 cost awards, which demonstrates the regulatory efficiencies achieved through the comprehensive settlement and virtual proceeding process.

Nevertheless, as this represents a significant potential cost to ratepayers, OPG supports a rigorous OEB review in accordance with OEB's Practice Direction on Cost Awards. Appraising costs involves many considerations. Among other things, intervenors' contributions can be measured in terms of the number of issues they participated in throughout the proceeding and by the quality of their submissions. OPG respectfully submits that, given only two issues proceeded to hearing, significant reductions in cost awards are expected. If in the OEB's view, an intervenor's cost claim is inconsistent with their relative contribution to the regulatory proceeding, OPG submits the OEB should disallow a portion of their costs.

For the reasons set out below, OPG objects to the cost claims filed by AMPCO and CCC as they relate to their joint participation on the D2O Storage Project issues, as well as the aggregate cost claims by Energy Probe and OSEA. OPG has no objections to the remaining cost award requests.

AMPCO/CCC's Joint Efforts on the D2O Storage Project

OPG objects to those portions of the cost claims submitted by AMPCO and CCC (AMPCO/CCC) relating to their joint participation on the D2O Storage Project issues. OPG respectfully submits that in large measure this joint effort does not meet the requirements for a cost award under the OEB's Practice Direction on Costs Awards, Section 5.01 because their efforts on this issue did not constitute responsible participation in this proceeding and did not contribute to the OEB's resolution of this issue, as explained below. For these reasons, OPG proposes that the OEB reduce AMPCO's cost claim by

\$26,934.36 (21%) and CCC's cost claim by \$16,353.35 (14%).¹ The bases for these reductions are discussed below and the derivation of the proposed reductions is set out in Attachment A, Tables 1 and 2 – AMPCO/CCC Cost Reduction Calculation.

A. AMPCO/CCC's Arguments on the D2O Storage Project Lacked Evidentiary Foundation and Did Not Contribute to the Resolution of the D2O Storage Project Issue

AMPCO/CCC challenged OPG's design of the D2O Storage Project and argued that there were superior alternatives to the facility. AMPCO/CCC claimed that the D2O Storage Project was overbuilt because the needs of refurbishment storage were temporary and therefore different than those for storage supporting ongoing Darlington operations. This claim was directly contradicted by the evidence on the record, and AMPCO/CCC provided no evidentiary support for their argument. Moreover, the premise of this argument, that refurbishment storage was temporary and thus did not require the systems and equipment essential for safely and legally storing radioactive D2O, ignored applicable law and CNSC regulations.

In the same vein are the design preferences that AMPCO/CCC's submission advocated for without providing any evidence that OPG's consideration and rejection of these design options, as established in evidence, was unreasonable. OPG respectfully submits that AMPCO/CCC's efforts to call the D2O Storage Facility's design into question were an inappropriate use of time. None of these submissions were substantiated and ultimately, they were neither adopted nor extensively discussed in the OEB's findings. As the OEB noted in its decision: "There is insufficient evidence that a different configuration or scope would have been a more prudent decision." The reason there was insufficient evidence is because AMPCO/CCC did not have any evidence upon which to base their claims. Ratepayers should not be required to compensate AMPCO/CCC for the time spent developing and advancing these unsubstantiated positions.

B. AMPCO/CCC's Submissions Were Duplicative and Inappropriately Focused

Other than the arguments discussed above, the remainder of AMPCO/CCC's submissions on D2O were entirely duplicative of OEB staff and other intervenors. They relied on the same citations and quotes from the reports OPG commissioned from Modus Strategic Solutions Canada and Burns & McDonnell Canada and those from the Ontario Auditor General's Report. Ultimately, AMPCO/CCC made the same recommendation to use the formulaic disallowance previously applied in EB-2016-0152 that many other intervenors advanced, which the OEB rejected.

Beyond its focus on the project design and alternative issues discussed above, AMPCO's discovery questions lacked proportionality and relevance, and sought minutiae that were not useful in assessing the prudence of a \$500M project spanning 10 years. Among the items AMPCO requested were:

- Specific information on the identity, training and experience of individual project managers. (Ex. L-D2-02-AMPCO-089(c)). When OPG refused to provide this information, AMPCO filed a motion to obtain it, which the OEB denied.
- Meeting Notices (Ex. L-D2-02-AMPCO-097).

¹ The recommended reduction to CCC's cost award relates exclusively to Mr. Buonaguro's participation on the D2O Storage Project at the oral hearing and in drafting submissions. OPG has no objection to the CCC cost claim as it relates to Ms. Girvan's participation or to Mr. Buonaguro's participation on other issues.

- Complete information on two cancelled RFPs that had no relation to the costs that OPG was seeking to recover (Ex. L-D2-02-AMPCO-100 and 101). When OPG declined to produce this information, AMPCO filed a motion to obtain it. This motion also was denied by the OEB.

OPG respectfully submits that AMPCO's discovery and its subsequent motion did not constitute responsible participation in this proceeding and did not help the OEB resolve the D2O Storage Project Issues. AMPCO's cost award should be appropriately reduced to reflect this.

Energy Probe

OPG objects to the quantum of Energy Probe's cost claim. Energy Probe has the fourth highest intervention cost in this proceeding (third if combining AMPCO/CCC), with cost claims approaching \$100,000. All intervenors, other than SEC, AMPCO and CCC, are below \$70,000.

Other than for the steps of the proceeding that are time-limited by the OEB's process, Energy Probe has generally claimed more hours than other parties. For example, Energy Probe's cost claims for review of application, discovery, and oral hearing preparations and attendance were notably higher than average. The hours that Energy Probe claimed for discovery are particularly high, at almost double the average intervenor's claim. For the technical conference, Energy Probe's cost claims includes 20 hours of preparation, which is more than double the average preparation time of the other intervenors (approx. 9.5 hours).

OPG respectfully submits that Energy Probe's cost claim should be reduced because it is incommensurate with its relative contribution to the proceeding and excessive when compared to other intervenors.

OSEA

OPG objects to the quantum of OSEA's cost claim. In the context of a nuclear application during a hydroelectric rate freeze, OSEA's cost claim is disproportionate to the narrow scope of its interest and is comparable to claims made by intervenors who participated on a broad range of issues.

For example, the time that OSEA claims for discovery exceeds the average hours claimed by intervenors with broad interests. OSEA also claimed the most hours for preparing for the issues list conference, and at 16.9 hours, greatly exceeded the average preparation time of 4.4 hours. Finally, OPG notes that OSEA engaged the largest team of all intervenors, with costs claimed for four individuals, despite focusing on a narrow scope.

OPG respectfully submits that OSEA's cost claim of approximately \$60,000 is excessive given its narrow interest, and as a result, is incommensurate with its relative contribution to the proceeding. OPG respectfully submits that the OEB reduce OSEA's cost award to reflect its proportionate contribution to the proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Evelyn Wong', with a long horizontal flourish extending to the right.

Evelyn Wong

cc: Aimee Collier, OPG
Charles Keizer, Torys LLP
Crawford Smith, Lax O'Sullivan Lisus Gottlieb

AMPCO Cost Claim

Line No.	Note	Hours	Hourly Rate	Sub Total	HST Rate	HST	Total
Discovery							
1	Preparation of Interrogatories	63.00	\$ 330.00	\$ 20,790.00	13%	\$ 2,702.70	\$ 23,492.70
2	Review Interrogatory Responses	34.50	\$ 330.00	\$ 11,385.00	13%	\$ 1,480.05	\$ 12,865.05
3	Technical Conference Preparation	19.25	\$ 330.00	\$ 6,352.50	13%	\$ 825.82	\$ 7,178.32
4	Technical Conference Attendance	28.00	\$ 330.00	\$ 9,240.00	13%	\$ 1,201.20	\$ 10,441.20
5	Total	144.75		\$ 47,767.50		\$ 6,209.77	\$ 53,977.27
6	Proposed Discovery-Related Award Reduction	1		\$ 5,259.79	13%	\$ 683.77	\$ 5,943.57
Oral Hearing							
7	Preparation	29.25	\$ 330.00	\$ 9,652.50	13%	\$ 1,254.83	\$ 10,907.33
8	Attendance at Oral Hearing	22.50	\$ 330.00	\$ 7,425.00	13%	\$ 965.25	\$ 8,390.25
9	Total	51.75		\$ 17,077.50		\$ 2,220.08	\$ 19,297.58
10	Proposed Oral Hearing-Related Award Reduction	2		\$ 8,923.83	13%	\$ 1,160.10	\$ 10,083.93
Submissions							
11	Written Submissions	38.75	\$ 330.00	\$ 12,787.50	13%	\$ 1,662.38	\$ 14,449.88
12	Proposed Submissions-Related Award Reduction	3		\$ 6,682.10	13%	\$ 868.67	\$ 7,550.77
Motions							
13	Preparation of Motion(s) Materials	6.00	\$ 330.00	\$ 1,980.00	13%	\$ 257.40	\$ 2,237.40
14	Attendance at Hearing on Motion(s)	3.00	\$ 330.00	\$ 990.00	13%	\$ 128.70	\$ 1,118.70
				\$ 2,970.00		\$ 386.10	\$ 3,356.10
15	Proposed Motions-Related Award Reduction	4		\$ 2,970.00	13%	\$ 386.10	\$ 3,356.10
16	Total Proposed AMPCO Cost Award Reduction			\$ 23,835.72		\$ 3,098.64	\$ 26,934.36

Notes:

- 1 OPG proposes to reduce AMPCO's D2O discovery cost award by 35%. As presented in the Table to Note 1 below, this translates to an 11% reduction to total discovery-related costs.

Table to Note 1 - AMPCO Discovery Reduction Calculation

1a	Number of D2O Interrogatories	56
1b	Total Number of Interrogatories	178
1c	D2O Interrogatories as Percentage of Total Interrogatories (line 1a / line 1b)	31%
1d	Reduction % for D2O Discovery	35%
1e	Proposed Discovery-related Award Reduction (%) (line 1c * line 1d)	11%
1f	Proposed Discovery-related Award Reduction (\$) (line 1e * line 5)	\$ 5,259.79

- 2 OPG proposes to reduce AMPCO's Oral Hearing cost award by 52%, consistent with the submission-related reduction determined in the table to Note 3.

Table to Note 2 - Oral Hearing Reduction Calculation

2a	Proposed Oral Hearing-related Award Reduction (%)*	52%
2b	Proposed Oral Hearing-related Award Reduction (\$) (line 2a * line 9)	\$ 8,923.83

* Per Submission-related Reduction % determined in Note 3

- 3 OPG proposes to reduce AMPCO's D2O submission cost award by 65%. As presented in the Table to Note 3 below, this translates to a 52% reduction to total submission costs.

Table to Note 3 - Submissions Reduction Calculation

3a	Number of D2O-related Submission Pages	41
3b	Total Number of Submission Pages	51
3c	D2O Submission Pages as Percentage of Total Submission Pages	80%
3d	Reduction % for D2O Submission	65%
3e	Proposed Submission-related Award Reduction (%) (line 3c * line 3d)	52%
3f	Proposed Submission-related Award Reduction (\$) (line 3e * line 11)	\$ 6,682.10

- 4 OPG proposes to reduce AMPCO's motion-related award by 100%.

CCC Cost Claim

Line No.		Note	Hours	Hourly Rate	Sub Total	HST Rate	HST	Total
	Oral Hearing							
1	Preparation		53.20	\$ 290.00	\$ 15,428.00	13%	\$ 2,005.64	\$ 17,433.64
2	Attendance at Oral Hearing		21.00	\$ 290.00	\$ 6,090.00	13%	\$ 791.70	\$ 6,881.70
3	Total		74.20		\$ 21,518.00		\$ 2,797.34	\$ 24,315.34
4	Proposed Oral Hearing-Related Award Reduction	1			\$ 11,244.21	13%	\$ 1,461.75	\$ 12,705.96
	Submissions							
5	Written Submissions		21.30	\$ 290.00	\$ 6,177.00	13%	\$ 803.01	\$ 6,980.01
6	Proposed Submissions-Related Award Reduction	2			\$ 3,227.79	13%	\$ 419.61	\$ 3,647.40
7	Total Proposed CCC Cost Award Reduction				\$ 14,472.00		\$ 1,881.36	\$ 16,353.35

Notes:

- 1 Given the joint effort between AMPCO and CCC, OPG proposes to reduce CCC's Oral Hearing-related cost award by same percentage, 52%, as calculated in the AMPCO Cost Claim Table for Oral Hearing and Submission-related costs.

Table to Note 1 - Oral Hearing Reduction Calculation

1a	Proposed Oral Hearing-related Award Reduction (%)	52%
1b	Proposed Oral Hearing-related Award Reduction (\$) (line 1a * line 3)	\$ 11,244.21

- 2 Given the joint effort between AMPCO and CCC, OPG proposes to reduce CCC's Submission-related cost award by same percentage, 52%, as calculated in the AMPCO Cost Claim Table for Oral Hearing and Submission-related costs.

Table to Note 2 - Submissions Reduction Calculation

2a	Proposed Submission-related Award Reduction (%)	52%
2b	Proposed Submission-related Award Reduction (\$) (line 2a * line 5)	\$ 3,227.79