



Ontario  
Energy  
Board | Commission  
de l'énergie  
de l'Ontario

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# **DECISION AND ORDER ON COST AWARDS**

## **EB-2020-0290**

### **ONTARIO POWER GENERATION INC.**

**Application for Payment Amounts for the Period from  
January 1, 2022 to December 31, 2026**

**BEFORE: Allison Duff**  
Presiding Commissioner

**Michael Janigan**  
Commissioner

**Pankaj Sardana**  
Commissioner

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**March 28, 2022**

## OVERVIEW

Ontario Power Generation Inc. (OPG) filed an application dated December 31, 2020, with the Ontario Energy Board (OEB), seeking approval for changes in payment amounts for the output of its nuclear generating facilities in each of the five years beginning January 1, 2022 and ending on December 31, 2026. OPG also requested approval to maintain, with no change, the base payment amount it charges for the output of its regulated hydroelectric generating facilities at the payment amount in effect on December 31, 2021 for the period from January 1, 2022 to December 31, 2026.

The OEB granted the following intervenors intervenor status and cost award eligibility:

- Association of Major Power Consumers in Ontario (AMPCO)
- Building Owners and Managers Association (BOMA)
- Canadian Manufacturers & Exporters (CME)
- Consumers Council of Canada (CCC)
- Energy Probe Research Foundation (Energy Probe)
- Environmental Defence Canada Inc. (Environmental Defence)
- London Property Management Association (LPMA)
- Ontario Association of Physical Plant Administrators (OAPPA)
- Ontario Sustainable Energy Association (OSEA)
- Quinte Manufacturers Association (QMA)
- School Energy Coalition (SEC)
- Vulnerable Energy Consumers Coalition (VECC)

On January 27, 2022, the OEB issued its Payment Amounts Order in which it set out the process for cost claims.

The OEB received cost claims from AMPCO, CCC, CME, Energy Probe, Environmental Defence, LPMA, OAPPA, OSEA, QMA, SEC and VECC. By email, BOMA indicated that it would not file a cost claim.

On February 24, 2022, OPG filed a letter stating that it had no objections to the cost claims except those portions submitted by AMPCO and CCC relating to their joint participation on the D2O Storage Project issues, as well as the aggregate cost claims by Energy Probe and OSEA. OPG noted that 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 submitted that, given only two issues proceeded to hearing, significant reductions in cost awards are expected.

OPG submitted that the cost claims submitted by AMPCO and CCC relating to their joint participation on the D2O Storage Project issues did not meet the requirement for a cost award under the OEB's Practice Direction on Cost Awards, section 5.0.1, because their efforts did not constitute responsible participation in this proceeding. For these reasons, OPG proposed that AMPCO's cost claim should be reduced by \$26,934.36 (21%) and that CCC's cost claim should be reduced by \$16,353.35 (14%).

With respect to Energy Probe's cost claim, OPG noted that Energy Probe has the fourth highest intervention cost in this proceeding, with cost claims approaching \$100,000, while all intervenors, other than SEC, AMPCO and CCC, are below \$70,000. OPG noted that Energy Probe's cost claims for review of application, discovery, and oral hearing preparations and attendance were notably higher than average. OPG further noted that the hours that Energy Probe claimed for discovery were particularly high, at almost double the average intervenor's claim. In addition, OPG noted that for the technical conference, Energy Probe's cost claims included 20 hours of preparation, which is more than double the average preparation time of the other intervenors. OPG submitted that Energy Probe's cost claim should be reduced because it is incommensurate with Energy Probe's relative contribution to the proceeding and excessive when compared to other intervenors.

OPG objected to the quantum of OSEA's cost claim and noted that it is disproportionate to the narrow scope of its interest and exceeded the average hours claimed by intervenors with broad interests. OSEA also claimed the most hours preparing for the issues list conference, and at 16.9 hours, greatly exceeded the average preparation time of 4.4 hours. Finally, OPG noted that OSEA engaged the largest team of all intervenors, with costs claimed for four individuals, despite focusing on a narrow scope. OPG further submitted that the OEB should reduce OSEA's cost award given its narrow scope and to reflect its proportionate contribution to the proceeding.

In response to OPG's objection, AMPCO and CCC submitted that they purposely joined together to address the two unsettled issues (concerning the small modular reactor and the D2O Project) to reduce costs. The two parties shared a consultant and counsel and divided areas of responsibility (along with other intervenors) with the objective of avoiding duplication. AMPCO/CCC submitted that they participated responsibly in the process meeting all of the requirements of section 5.01, including taking extra efforts to combine cross examination and argument, thereby reducing costs and duplication.

In response to OPG's objection, Energy Probe noted that it was the fourth highest claim out of eleven claims. Energy Probe stated that AMPCO and CCC are separate intervenors with the second and third highest costs. Energy Probe further noted that the total claim of the intervenor with the highest total, SEC, is more than double the amount

claimed by Energy Probe. Energy Probe noted that OPG's assertion seemed to be based on a premise that there are two classes of intervenors, an upper class that includes SEC, AMPCO, and CCC and a lower class that includes all other intervenors. Energy Probe submitted that this assertion is based on a false and unsubstantiated premise and that the OEB should reject it.

In response to OPG's objection, OSEA disagreed with OPG's comment regarding OSEA's limited contribution to the proceeding and stated that OSEA's consultants led the discussion regarding OPG's hydroelectric assets and their operation in the wholesale market. OSEA stated that no other intervenor compiled data or undertook a technical analysis on this topic. OSEA noted that undertaking which involved a significant amount of analysis and research – using data from the IESO's public reporting – took time and expertise, and OSEA submitted that this analysis was a valuable contribution to this proceeding. OSEA stated that its participation in the proceeding contributed to the OEB's objectives of promoting economic efficiency, cost effectiveness and electricity conservation in the generation of electricity. OSEA submitted that its claimed costs are appropriate given the breadth of the topic and limited data provided by OPG regarding its hydroelectric assets.

## Findings

The OEB has reviewed the 11 cost claims to ensure that they are compliant with the OEB's Practice Direction on Cost Awards.

After the settlement proposal was filed on July 16, 2021, the unsettled issues constituted a small but significant group of issues in the total application. After reviewing the hours claimed after July 16, 2021, the OEB takes no issue with the claims filed, relating to the oral hearing, submission and rate order phases of the proceeding.

Approximately 80% of the claimed hours were billed for work prior to July 16, 2021, when the settlement proposal was filed, and 63% of the claimed hours were billed prior to the start of the settlement conference on June 7, 2021. Apart from the cost claims themselves, the value of the contribution by each intervenor in the settlement process is necessarily opaque. The OEB recognizes the overall value of the settlement proposal both in terms of balancing the needs of the utility, its shareholders and its customers, while enabling an expeditious conduct of the hearing. The OEB takes no issue with the hours claimed to attend the settlement conference and prepare the settlement proposal.

Regarding AMPCO/CCC, the OEB regards their joint effort as responsible in bringing forward an efficient intervention. The OEB does not agree with OPG's submissions regarding AMPCO and CCC's joint participation after the settlement proposal was filed. The OEB does not accept OPG's assertions that AMPCO/CCC put forward

irresponsible, alternative views of the D2O project. OPG is not in a position to critique the advancement of alternatives relevant to the D2O project, given its own troublesome progress to complete the project.

The OEB has considered the reasonableness of the total hours claimed, the work performed prior to the settlement conference, and how this work informed the subsequent phases of the proceeding. The proceeding included significant procedural matters such as the technical conference, issues list hearing, motions hearing, interrogatories, confidentiality requests and evidence updates that engaged many of the intervenors.

**Table 1: Hours Billed by Intervenor**

<b>Intervenor</b>	<b>Hours Billed before June 7, 2021</b>	<b>Total Hours Billed</b>
AMPCO	209.50	350.00
CCC <sup>1</sup>	173.10	328.40
CME	114.30	215.20
Energy Probe	161.00	255.00
Environmental Defence	60.00	87.20
LPMA	117.90	174.90
OAPPA	34.75	83.50
OSEA	145.30	212.15
QMA	62.25	104.25
SEC <sup>2</sup>	455.35	811.60
VECC	126.50	201.25
<b>TOTAL</b>	<b>1,663.45</b>	<b>2,823.45</b>

Every intervenor was working with the same application and proceeded through the same procedural steps, and yet some billed more than others to prepare for the settlement conference and ensuing oral hearing. The OEB disagrees with Energy Probe that there are “classes of intervenors”, yet value to the OEB has been assessed.

<sup>1</sup> CCC deducted 3.5 hours for the technical conference from its cost claim. Hours billed prior to June 7 are based on the detailed dockets with 3.5 hours deducted.

<sup>2</sup> SEC deducted 74.5 hours from its cost claim. Hours billed prior to June 7, 2021, are based on the detailed dockets with an estimated 37.25 hours (50% of 74.5) deducted.

Instead, the OEB has applied judgement in determining the relative value brought forward by intervenors.

The OEB approves the cost claims as submitted except for the claims submitted by AMPCO, CCC, Energy Probe, OSEA and SEC.

For OSEA, the OEB has reduced the claimed hours before June 7, 2021 by 40%. The OEB approves a cost award of 87.2 hours (145.3 – 58.1). The OEB agrees with OPG that the number of billed hours was excessive given the scope of OSEA's intervention in the context of the entire issues list. The scope of the hearing focused primarily on OPG's regulated nuclear business, not hydroelectric assets and their operation in the wholesale market. In reaching this decision, the OEB compared OSEA's cost claim to other intervenors with similar scope. The OEB has reduced the total claim accordingly based on OSEA's weighted average hourly rate.

For AMPCO, CCC and Energy Probe, the OEB has reduced the claimed hours before June 7, 2021 by 15%. The OEB approves a cost award for AMPCO of 178.1 hours (209.5 - 31.4), CCC of 147.2 hours (173.1 - 25.9) and Energy Probe of 136.8 hours (161.0 – 24.2). The OEB finds that these claims exceeded the average claimed by other intervenors with similar levels of participation prior to the settlement conference. While some additional time may be explicable, the quantum is not completely justified. The OEB has reduced the respective total claims accordingly, based on each intervenor's weighted average hourly rate.

Regarding SEC, the cover letter to its cost claim informed the OEB of their role during the proceeding. SEC indicated that it "took a lead role amongst the intervenors in this proceeding, acting as a coordinator during the lead-up and through the settlement process. This involved acting as a liaison between the intervenors and OEB Staff, organizing and hosting a meeting between intervenors". SEC also did not claim for 74.5 hours of time for SEC's junior counsel.

The OEB accepts SEC's assertion of its enhanced role in this proceeding, which was not disputed by OPG, yet does not accept the need to claim 455.3 hours in aggregate prior to the June 7, 2021, which is more than twice the next highest intervenor claim. The OEB finds this excessive and reduces SEC hours by 25% to 341.6 hours (455.3 – 113.7). The OEB has reduced the total claim accordingly based on SEC's weighted average hourly rate.

**THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Ontario Power Generation Inc. shall immediately pay the following amounts to the intervenors for their costs:

• Association of Major Power Consumers in Ontario	\$118,805.94
• Canadian Manufacturers & Exporters	\$56,011.84
• Consumers Council of Canada	\$105,541.07
• Energy Probe Research Foundation	\$80,595.57
• Environmental Defence Canada Inc.	\$28,236.44
• London Property Management Association	\$65,220.21
• Ontario Association of Physical Plant Administrators	\$31,137.12
• Ontario Sustainable Energy Association	\$40,394.53
• Quinte Manufacturers Association	\$19,437.41
• School Energy Coalition	\$210,128.87
• Vulnerable Energy Consumers Coalition	\$69,029.15

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

**DATED** at Toronto March 28, 2022

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar