



EB-2007- 0905

IN THE MATTER OF the *Ontario Energy Board Act 1998*,
S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF an application by Ontario
Power Generation Inc. pursuant to section 78.1 of the
Ontario Energy Board Act, 1998 for an Order or Orders
determining payment amounts for the output of certain of
its generating facilities.

BEFORE: Gordon Kaiser
Presiding Member and Vice Chair

Cynthia Chaplin
Member

Bill Rupert
Member

DECISION AND ORDER ON COST AWARDS

The Ontario Energy Board (the “Board”) received an application from Ontario Power Generation Inc. (“OPG”) on November 30, 2007, under section 78.1 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the “Act”), seeking approval for increases in payment amounts for the output of certain of its generating facilities, to be effective April 1, 2008. The Board assigned the application file number EB-2007-0905 and issued a Notice of Application and Oral Hearing dated December 13, 2007.

The Board in its EB-2007-0905 Procedural Order No.6 granted eligible intervenors the opportunity to file two separate claims, one for costs incurred to June 20, 2008 and the other for costs incurred after June 20, 2008. The Association of Major Power Consumers in Ontario ("AMPCO"), Canadian Manufacturers & Exporters ("CME"), the Consumers Council of Canada ("CCC"), the Energy Probe Research Foundation ("Energy Probe"), Pollution Probe, the School Energy Coalition ("SEC"), the Vulnerable Energy Consumers Coalition ("VECC") and the Green Energy Coalition ("GEC"), inclusive of the Pembina Foundation and the Ontario Sustainable Energy Association, filed cost claims with the Board.

OPG did not object to the claims filed by the eligible intervenors but in a letter dated August 21, 2008 did express a concern with AMPCO's cost claim. AMPCO filed a reply on August 29, 2008.

The Board has reviewed the costs claims filed by AMPCO, CME, CCC, Energy Probe, Pollution Probe, SEC, VECC and GEC.

The Board has concerns with respect to two of the cost claims.

First, the evidence tendered by Dr. Schwartz on behalf of Energy Probe was of limited value to the Board in its consideration of the issues. As set out in the Board's Decision with Reasons, dated November 3, 2008, with respect to OPG's application:

The Board concludes that while Dr. Schwartz presented novel ideas, he was unable to address his recommendations within a regulatory context. As a result, the Board did not rely on his evidence for purposes of setting the cost of capital.

In the circumstances, the Board will reduce Energy Probe's cost claim by 10%.

Secondly, the Board is concerned that the costs claimed by AMPCO are substantially greater than the costs claimed by the other parties. The Board has considered the AMPCO submissions of August 29, 2008, but the Board finds that the contribution by AMPCO was not significantly greater than that of other intervenors. It is true that this proceeding was unique and complex. But all intervenors faced that situation. This hearing lasted 15 days. All of the major intervenors including AMPCO participated each day. However, the average cost claim for CME, SEC and CCC is 25% below the

AMPCO cost claim. These costs are ultimately borne by the electricity consumer. The Board has a responsibility to impose some cost discipline on the process.

In addition, the AMPCO cost claim included a claim for \$10,434 for time spent by Mr. Adam White. According to his CV, Mr. White is both the President of AMPCO and the President and CEO of AITIA Analytics Inc. He has submitted bills to AMPCO from AITIA for his time, and those invoices have been filed with the cost claim. However, Mr. White's responsibilities as President of AMPCO include being "Responsible for monitoring the activities and engaging with regulatory agencies and agency processes on issues of importance to members." The Board concludes that the work conducted by Mr. White has been in his role as President of AMPCO. The Practice Direction on Cost Awards states: "A party will not be compensated for time spent by its employees or officers in preparing for or attending at Board processes". As a result, the claim for Mr. White's time is not eligible for recovery.

In the circumstances, the Board will reduce the AMPCO cost claim in total by 10%, a reduction which includes the amount billed for Mr. White's time. This will still leave the AMPCO costs well above the other intervenors.

Also, the cost claims of CME, CCC and AMPCO were not completely supported by receipts. The review of the claims indicated that certain costs claimed are not in accordance with the *Board Practice Direction on Cost Awards* and therefore the Board has made the following adjustments to the cost claims.

- CME: \$242.35 reduction in disbursements.
- CCC: \$106.53 reduction in disbursements.
- AMPCO: \$892.53 reduction in disbursements.

Based upon its review, the Board finds that the aforementioned intervenors are eligible for 100% of their adjusted costs.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 20 of the *Ontario Energy Board Act, 1998*, OPG shall immediately pay the costs of the eligible intervenors as indicated in Appendix A attached to this Decision and Order.

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

DATED at Toronto, November 10, 2008.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A

(EB-2007-0905 Cost Awards)

	Claimed	Adjustments	Approved
Association of Major Power Producers of Ontario	\$393,125.37	(\$40,115.82)	\$353,009.55
Canadian Manufacturers & Exporters	\$162,777.22	(\$242.35)	\$162,534.87
Consumers Council of Canada	\$322,729.76	(\$106.53)	\$322,623.23
Energy Probe Research Foundation	\$182,651.27	(\$18,265.13)	\$164,386.14
Green Energy Coalition*	\$46,701.42		\$46,701.42
Pollution Probe	\$124,061.32		\$124,061.32
School Energy Coalition	\$165,865.70		\$165,865.70
Vulnerable Energy Consumers Coalition	\$95,742.19		\$95,742.19
TOTAL	\$1,493,654.25	(\$58,729.83)	\$1,434,924.42
* includes the Pembina Foundation and the Ontario Sustainable Energy Association			