



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

DECISION AND ORDER

EB-2016-0248

Industrial Gas Users Association

**Motion to Review OEB Decision and Order on Cost
Awards (EB-2016-0122)**

**BEFORE: Christine Long, Vice Chair and Presiding Member
Paul Pastirik**

October 20, 2016

Introduction

In this motion, the Industrial Gas Users Association (IGUA) asks the Ontario Energy Board (OEB) to review and vary its August 9, 2016 Decision and Order on Cost Awards in which the OEB disallowed a portion of the costs claimed by IGUA (the Disallowance) for intervening in the application by Union Gas Limited (Union) for leave to construct the 2016 Sudbury Replacement Project (EB-2016-0122).

The only aspect of the cost decision that IGUA challenges is the following:

The OEB will disallow 50% of the 0.30 hour that Mr. Ian Mondrow claimed for work on June 14, 2016 to “Review and finalize submissions; review OEB Staff submissions”. The OEB finds it not appropriate for an intervenor to charge for time to review the OEB Staff submission given it was circulated and filed after IGUA had filed its own submissions.

The Disallowance amounted to only \$49.50 plus HST, for nine minutes of counsel’s time. Nevertheless, IGUA takes the position that “the narrow approach to cost award considerations reflected in the cost determination in question has the potential to significantly, and inappropriately, constrain future responsible intervenor conduct, to the prejudice of both cost eligible intervenors and the Board’s own processes.” IGUA further argues that being a responsible and effective intervenor includes reviewing the submissions of other parties, even if they come in after the intervenor’s own submission was filed.

Findings

The OEB has reviewed IGUA’s submission. The OEB has also reviewed the submissions of Union and OEB staff, both of whom support IGUA’s request for a reversal of the Disallowance. The OEB will allow the amount which was disallowed. Having come to this conclusion, the OEB is of the view that it is not necessary to hear from the Vulnerable Energy Consumers Coalition, which, although it was not a party to the leave to construct proceeding, asked for permission to be added as a party to this motion. The OEB does not require reply submissions from IGUA.

The OEB has broad discretion under the *Ontario Energy Board Act, 1998* in awarding costs. As OEB staff’s submission also sets out, the OEB also has broad discretion to determine when it will review a decision. The four delineated grounds for review under Rule 42.01 of the OEB’s *Rules of Practice and Procedure* are not exhaustive, and the OEB may, where it chooses to do so, review a decision even if it is not persuaded that

the grounds claimed fall squarely within the four enumerated grounds set out in Rule 42.01.¹ The OEB has chosen to do so in this case.

IGUA was granted cost eligibility in this proceeding. The disputed time claimed by IGUA's counsel was for activities undertaken during the proceeding. These activities included the review and finalization of IGUA's own submission and the review of the OEB staff submission. The amount of time claimed for the activities undertaken was reasonable. Given the nature of the activities and the amount of time claimed, the OEB is of the view that these activities were of value to the OEB's process in this case.

Given the circumstances of this case, the OEB is of the view that it is appropriate for the OEB to reconsider its original decision regarding the cost claim made by IGUA. The disputed time claimed was reasonable and should be recoverable.

Accordingly, the Disallowance of 0.15 hours, or \$49.50 plus HST, is reversed.

As IGUA did not seek costs for bringing this motion, the OEB will not award them.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Union shall pay IGUA \$49.50 plus HST, in addition to the amount ordered in the August 9, 2016 Decision and Order on Cost Awards.

DATED at Toronto, October 20, 2016

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

¹ Rule 42.01 of the *Rules of Practice and Procedure* states that a notice of motion to review must "set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include: (i) error of fact; (ii) change in circumstances; (iii) new facts that have arisen; (iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time."