



**EB-2008-0346**

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

**AND IN THE MATTER OF** cost awards in relation to a  
consultation process regarding the development of  
guidelines for demand side management to be used by  
natural gas distributors.

**BEFORE:** Gordon Kaiser  
Vice-Chair

## **DECISION AND ORDER ON COST AWARDS**

### **Background**

On October 31, 2008, the Ontario Energy Board (the “Board”) began a consultation process to develop guidelines for demand side management (“DSM”) (“DSM Guidelines”) to be used by natural gas distributors in developing their next generation DSM plans.

In its October 31, 2008 letter, the Board stated that cost awards would be available to eligible persons under section 30 of the *Ontario Energy Board Act, 1998* (the “Act”) in relation to their participation in this consultation; that any costs awarded would be recovered from all rate-regulated natural gas distributors based on their respective distribution revenues; and that it would act as a clearing house for all payments of cost awards.

In accordance with the Board's November 28, 2008 Decision on Cost Eligibility, the following participants were found to be eligible for an award of costs: Building Owners and Managers Association of the Greater Toronto Area (“BOMA”); Canadian

Manufacturers & Exporters (“CME”); Consumers Council of Canada (“CCC”); Energy Probe Research Foundation (“Energy Probe”); Green Energy Coalition (“GEC”); Industrial Gas Users Association (“IGUA”); London Property Management Association (“LPMA”); Low-Income Energy Network (“LIEN”); Pollution Probe; School Energy Coalition (“SEC”); and Vulnerable Energy Consumers Coalition (“VECC”).

On February 18, 2010, the Board issued a Notice of Hearing for Cost Awards (the “Notice”) in relation to the development of DSM Guidelines. The Notice included a listing of the eligible activities for the period starting October 31, 2008 to January 6, 2010, and set the maximum number of hours eligible for cost awards for these activities at 30 hours.

All of the eligible participants submitted cost claims by the March 11, 2010 due date. A collaborative of eligible participants filed a joint submission as part of the eligible activities. This joint effort is reflected in GEC’s cost claim of 88 hours comprised of GEC’s 30 eligible hours plus a total of 58 hours pooled from the other members of the collaborative (BOMA, CCC, CME, IGUA, LIEN, LPMA, Pollution Probe and VECC).

On April 1, 2010, Enbridge Gas Distribution Inc. (“Enbridge”) filed a letter stating that it had no objection to the cost claims of BOMA, CCC, CME, Energy Probe, IGUA, LPMA, LIEN, Pollution Probe and VECC. However, Enbridge noted that SEC’s cost claim exceeded the maximum 30 hours for the eligible activities listed in the Notice. Enbridge also questioned whether the exchange rate used by GEC’s to convert its consulting invoices from American dollars to Canadian dollars was appropriate.

On April 6, 2010, GEC replied that it used the exchange rate posted on the Bank of Canada’s website on April 29, 2009, the date it prepared its cost claim. No reply submission was received from SEC.

### **Board Findings on the Cost Claims of the Eligible Participants**

The Board is satisfied with GEC’s explanation and finds that the exchange rate it used was appropriate for the purpose of its cost claim. The Board notes that although GEC provided evidence that it spent 93 hours on eligible activities, it limited its cost claim to the 88 eligible hours pooled by the collaborative. Of those 88 hours claimed, 17 hours were billed by its legal counsel and 71 hours by its consultants. The Board notes that while CME’s individual claim of 27.1 hours added to the 7 hours it contributed to the

collaborative effort exceeds the maximum 30-hour per eligible participant, other eligible participants in the collaborative were below their individual limits. On balance, the Board finds that GEC's cost claim is reasonable in light of the underlying collaborative effort and that it is entitled to 100% of its reasonably incurred costs of participating in this consultation.

With regard to SEC, the Board notes that its cost claim of 67.1 hours exceeds the maximum number of hours set out in the Board's January 26, 2009 letter. The Board also notes that SEC did not explain why the Board should consider awarding it more hours than the maximum the Board had set. Of the 67.1 hours claimed by SEC, 35.1 hours were billed by its legal counsel and 32 hours by its consultant. The Board will not award costs to SEC in excess of the 30-hour maximum and has therefore reduced its claim accordingly to 30 hours. The Board notes that this cost claim reduction is consistent with its finding for SEC's cost claim in its Decision and Order on Cost Awards in the Consultation on Energy Issues Relating to Low Income Consumers.

This practice by SEC of claiming hours over and above those directed by the Board with no explanation for the deviation is an ongoing practice.<sup>1</sup> This practice constitutes an abuse of the Board's process resulting in unnecessary work by the utilities, the Board and Board staff in analyzing these claims and in writing these decisions on cost awards. If it happens again, there is a real possibility that the Board will award SEC no costs.

The cost claims filed by all other eligible participants are within the maximums set by the Board in its January 26, 2009 letter. The Board finds that each of these eligible participants is entitled to 100% of its reasonably incurred costs of participating in this consultation.

The amount payable by each individual licensed rate-regulated gas distributor in relation to costs awarded to each eligible participant is listed in Appendix A to this Decision and Order.

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<sup>1</sup> See Decision and Order on Cost Awards dated December 4, 2009 (and as corrected on December 8, 2009) in the Consultation on Energy Issues Relating to Low Income Consumers, EB-2008-0150, p. 7. See also Decision and Order on Cost Awards for Phase 1 of the IPSP proceeding, dated May 8, 2008, EB-2007-0707, p. 7, and Decision and Order on Cost Awards dated September 16, 2008 in Toronto Hydro-Electric System Limited multi-year cost of service proceeding, EB-2007-0680, p.3.

### **Process for Paying the Cost Awards**

As stated in the Notice, the Board will use the process set out in section 12 of the Practice Direction to implement the payment of the cost awards. Therefore, the Board will act as a clearing house for all payments of cost awards relating to this consultation process. Invoices will be issued to all licensed rate-regulated gas distributors at the same time as are invoices for cost assessments made under section 26 of the Act. The practice of the Board is to issue to each licensed rate-regulated gas distributor one invoice that covers all cost awards payable by that licensed rate-regulated gas distributor for the relevant period. As a result, the invoice may cover cost awards payable in relation to a number of consultations, including this one.

### **THE BOARD THEREFORE ORDERS THAT:**

1. The amounts to be paid by each individual licensed rate-regulated gas distributor in relation to the costs awarded to each eligible participant are as set out in Appendix A to this Decision and Order.
2. The individual licensed rate-regulated gas distributor listed in Appendix A to this Decision and Order shall pay the costs awarded to each of the eligible participants as set out in Appendix A.
3. The individual licensed rate-regulated gas distributor listed in Appendix A to this Decision and Order shall pay the Board's costs of, and incidental to, this consultation.
4. Payment of cost awards and of the Board's costs referred to in paragraphs 2 and 3 shall be made to the Ontario Energy Board in accordance with the invoice issued to the individual licensed rate-regulated gas distributor, and shall be due at the same time as cost assessments under section 26 of the Act are due.

**DATED** at Toronto, June 9, 2010

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

Appendix A  
to the Board's Decision and Order on Cost Awards

**EB-2008-0346**  
**Consultation Process Regarding the Development of Guidelines**  
**for Demand Side Management to Be Used by Natural Gas Distributors**

Cost awards in relation to eligible activities for the period starting October 31, 2008 to January 6, 2010 (\$)

Gas Distributor*					
Eligible Participant	Enbridge Gas Distribution Inc.	Union Gas Ltd.	Natural Resource Gas Ltd.	Total Awarded	Total Claimed
<b>BOMA</b>	1,899.54	1,557.66	7.80	<b>3,465.00</b>	<b>3,465.00</b>
<b>CCC</b>	3,704.11	3,037.44	15.20	<b>6,756.75</b>	<b>6,756.75</b>
<b>CME</b>	3,957.55	3,245.27	16.24	<b>7,219.06</b>	<b>7,219.06</b>
<b>Energy Probe</b>	3,640.14	2,984.99	14.94	<b>6,640.07</b>	<b>6,640.07</b>
<b>GEC</b>	11,224.54	9,204.33	46.07	<b>20,474.94</b>	<b>20,474.94</b>
<b>IGUA</b>	4,436.91	3,638.35	18.21	<b>8,093.47</b>	<b>8,093.47</b>
<b>LPMA</b>	2,009.64	1,647.95	8.25	<b>3,665.84</b>	<b>3,665.84</b>
<b>LIEN</b>	4,766.47	3,908.59	19.56	<b>8,694.62</b>	<b>8,694.62</b>
<b>Pollution Probe</b>	1,165.15	955.44	4.78	<b>2,125.37</b>	<b>2,125.37</b>
<b>SEC</b>	5,457.09	4,474.91	22.40	<b>9,954.40</b>	<b>20,917.40</b>
<b>VECC</b>	2,781.47	2,280.86	11.42	<b>5,073.75</b>	<b>5,073.75</b>
<b>TOTAL</b>	<b>45,042.61</b>	<b>36,935.79</b>	<b>184.87</b>	<b>82,163.27</b>	<b>93,126.27</b>

\* Cost awards allocated to rate-regulated natural gas distributors based on their respective distribution revenues.