



# **ONTARIO ENERGY BOARD**

## **Practice Direction**

**On**

## **Cost Awards**

**Revised April 1, 2023**

# ONTARIO ENERGY BOARD

## PRACTICE DIRECTION ON COST AWARDS

### 1. DEFINITIONS

1.01 In this Practice Direction, words have the same meaning as in the *Ontario Energy Board Act, 1998* or the Ontario Energy Board's Rules of Practice and Procedure, unless otherwise defined in this section.

"Act" means the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B;

"applicant" means:

- (a) when used in connection with a process commenced by an application to the Board, the person(s) who make(s) an application;
- (b) when used in connection with a process commenced by reference, Order in Council, or on the Board's own initiative, the person(s) named by the Board to be the applicant; and
- (c) when used in connection with a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, the person(s) from whom cost awards will be recovered in relation to the process, as determined by the Board;

"intervenor", in respect of a proceeding, means a person who has been granted intervenor status by the Board and, in respect of a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, means a person who is participating in that process, and "intervention" shall be interpreted accordingly;

"municipality" has the same meaning as in the *Municipal Act, 2001*, S.O. 2001, c.25;

"party" means an applicant, an intervenor and any other person participating in a Board process;

"person" includes (i) an individual; (ii) a company, sole proprietorship, partnership, trust, joint venture, association, corporation or other private or public body corporate; and (iii) an unincorporated association or organization;

"process" means a process to decide a matter brought before the Board whether commenced by application, reference, Order in Council, notice of appeal or on the Board's own initiative, and includes a notice and comment process under section 45 or 70.2 of the Act and any other consultation process initiated by the Board;

"Tariff" means the Cost Award Tariff contained in Appendix A to this Practice Direction;

"*Travel, Meal and Hospitality Expenses Directive*" means the Ministry of Government Services, Management Board of Cabinet, *Travel, Meal and Hospitality Expenses Directive*,

dated April 1, 2010, as may be revised from time to time; and

“wholesaler” means a person who purchases electricity or ancillary services in the IESO-administered markets or directly from a generator or who sells electricity or ancillary services through the IESO-administered markets or directly to another person, other than a consumer.

## **2. COST POWERS**

2.01 The Board may order any one or more of the following:

- (a) by whom and to whom any costs are to be paid;
- (b) the amount of any costs to be paid or by whom any costs are to be assessed and allowed;
- (c) when any costs are to be paid;
- (d) costs against a party; and
- (e) the costs of the Board to be paid by a party or parties.

2.02 The timelines set out in this Practice Direction shall apply unless, at any stage in a particular process, the Board determines or orders otherwise.

## **3. COST ELIGIBILITY**

3.01 The Board may determine whether a party is eligible or ineligible for a cost award.

3.02 The burden of establishing eligibility for a cost award is on the party applying for a cost award.

3.03 A party in a Board process is eligible to apply for a cost award where the party:

- (a) primarily represents the direct interests of consumers (e.g. ratepayers) in relation to services that are regulated by the Board;
- (b) primarily represents an interest or policy perspective relevant to the Board’s mandate and to the proceeding for which cost award eligibility is sought; or
- (c) is a person with an interest in land that is affected by the process.

3.04 In making a determination whether a party is eligible or ineligible, the Board may:

- (a) in the case of a party that is an association or other form of organization comprised of two or more members, have regard to whether the individual members would themselves be eligible or ineligible;
- (b) in the case of a party that is a commercial entity, have regard to whether the entity primarily represents its own commercial interest (other than as a ratepayer) , even if the entity may be in the business of providing services that can be said to serve an interest or policy perspective relevant to the Board’s mandate and to the proceeding for which cost eligibility is sought;
- (c) in the case of a party that frequently applies for intervenor status in Board proceedings, have regard to whether the party has conformed with Rule

- 22.07 of the Board's Rules of Practice and Procedure; and
- (d) also consider any other factor the Board considers to be relevant to the public interest.

3.05 Despite section 3.03, the following parties are not eligible for a cost award:

- (a) an applicant;
- (b) an electricity transmitter, wholesaler, generator, distributor, retailer, and unit sub-meter provider, either individually or in a group;
- (c) a gas transmitter, gas distributor, gas marketer and storage company, either individually or in a group;
- (d) the Independent Electricity System Operator;
- (e) the Smart Metering Entity;
- (f) the government of Canada (including a department), and any agency, Crown corporation or special operating agency listed in a schedule to the *Financial Administration Act* (Canada) that has not at the relevant time been privatized;
- (g) the government of Ontario (including a ministry), and any public body or Commission public body listed in Table 1 of Ontario Regulation 146/10 (Public Bodies and Commission Public Bodies – Definitions) made under the *Public Service of Ontario Act, 2006* (Ontario);
- (h) a municipality in Ontario, individually or in a group;
- (i) a conservation authority established by or under the *Conservation Authorities Act* (Ontario) or a predecessor of that *Act*, individually or in a group;
- (j) a corporation, with or without share capital, owned or controlled by the government of Canada, the government of Ontario or a municipality in Ontario; and
- (k) a person that owns or has a controlling interest in a person listed in (a), (b) or (c) above.

For the purposes of paragraph (j), control has the same meaning as in the *Business Corporations Act* (Ontario).

For the purposes of paragraph (k): (i) a person has a controlling interest in another person listed in (a), (b) or (c) that is a limited partnership if the person is a general partner; (ii) a person has a controlling interest in another person listed in (a), (b) or (c) that is any other form of partnership if the person is a partner; and (iii) a person has a controlling interest in another person listed in (a), (b) or (c) that is a corporation if the person controls the corporation or controls a corporation that holds 100 percent of the voting securities of the first-mentioned corporation, control having the same meaning as in the *Business Corporations Act* (Ontario).

3.06 Notwithstanding section 3.05, a party which falls into one of the categories listed in section 3.05 may be eligible for a cost award if it is a customer of the applicant.

3.07 Also notwithstanding section 3.05, the Board may, in special circumstances, find that a party which falls into one of the categories listed in section 3.05 is eligible for a cost award in a particular process.

3.08 The Board may, in appropriate circumstances, award an honorarium in such amount

as the Board determines appropriate recognizing individual efforts in preparing and presenting an intervention, submission or written comments.

#### **4. COST ELIGIBILITY PROCESS**

4.01 A party that will be requesting costs must make a request for cost eligibility that includes the reasons as to why the party believes that it is eligible for an award of costs, addressing the Board's cost eligibility criteria (see section 3). The request for cost eligibility shall:

- (a) in the case of an adjudicative proceeding, be filed as part of the party's Intervention Form, or,
- (b) in the case of a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, be filed in the manner and by the date specified by the Board for that purpose.

For additional information on filing and serving the Intervention Form, refer to Rule 22 and Appendix A of the Board's Rules of Practice and Procedure.

4.02 An applicant in a process may object to a request for cost eligibility as follows:

- (a) in the case of an adjudicative proceeding, within 5 calendar days from the deadline for filing intervention requests (which will include cost eligibility requests through the Intervenor Form), or
- (b) in the case of a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, be filed in the manner and by the date specified by the Board for that purpose.

4.03 A person that receives an objection under 4.02 may:

- (a) in the case of an adjudicative proceeding, make written submissions in response to the objection within 5 calendar days of being served with the objection, and shall file the response and serve it on the party making the objection, or
- (b) in the case of a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, make written submissions in response to the objection, and file the response and serve it on the party making the objection in the manner and by the date specified by the Board for that purpose.

4.04 The Board may at any time seek further information and clarification from any party that has filed a request for cost eligibility or objected to such a request, and may provide direction in respect of any matter that the Board may consider in determining the amount of a cost award, and, in particular, combining interventions and avoiding duplication of evidence or interventions.

4.05 A direction mentioned in section 4.04 may be taken into account in determining the amount of a cost award under section 5.01.

## **5. CONSIDERATIONS IN AWARDING COSTS**

- 5.01 In determining the amount of a cost award to a party, the Board may consider, amongst other things, whether the party has demonstrated through its participation and documented in its cost claim that it has:
- (a) participated responsibly in the process;
  - (b) contributed to a better understanding by the Board of one or more of the issues in the process; complied with the Board's orders, rules, codes, guidelines, filing requirements and Rule 22.07 of the Board's Rules of Practice and Procedure with respect to frequent intervenors, and any directions of the Board;
  - (c) made reasonable efforts to combine its intervention with that of one or more similarly interested parties, and to co-operate with all other parties;
  - (d) made reasonable efforts to ensure that its participation in the process, including its evidence, interrogatories and cross-examination, was not unduly repetitive and was focused on relevant and material issues;
  - (e) engaged in any conduct that tended to lengthen the process unnecessarily; or
  - (f) engaged in any conduct which the Board considers inappropriate or irresponsible.

## **6. COSTS THAT MAY BE CLAIMED**

- 6.01 Reference should be made to the Board's Tariff.
- 6.02 Cost claims shall be prepared and filed through the Board's online cost claim filing system.
- 6.03 The burden of establishing that the costs claimed were incurred directly and necessarily for the party's participation in the process is on the party claiming costs.
- 6.04 A party that is a natural person who has incurred a wage or salary loss as a result of participating in a hearing may recover all or part of such wage or salary loss, in an amount determined appropriate by the Board.
- 6.05 A party will not be compensated for time spent by its employees or officers in preparing for or attending at Board processes. When determining whether an individual is an officer or employee of the party, the Board will look at the true nature of the relationship between the individual and the party and the role the individual performs for the party. The Board may deem the individual to be an officer or employee of the party regardless of the individual's title, position, or contractual status with the party. Furthermore, an employee or officer of a company or organization that is affiliated with or related to the party that is eligible for an award of costs will be deemed to be an employee or officer of the party.
- 6.06 Counsel fees will be accepted in accordance with the Board's Tariff.

- 6.07 Paralegal fees will be accepted in accordance with the Board's Tariff. To qualify for consideration as a paralegal service, a paralegal must have undertaken services normally or traditionally performed by legal counsel, thereby reducing the counsel's time spent on client affairs.
- 6.08 Where appropriate, fees for articling students may be accepted in accordance with the Board's Tariff.
- 6.09 Cost awards will not be available in respect of services provided by in-house counsel and supporting employees, including in-house paralegal and articling students.
- 6.10 Analyst / Consultant fees including for case management will be accepted in accordance with the Board's Tariff. A copy of the analyst / consultant's curriculum vitae must be included with the completed online filing if the consultant has not already provided a curriculum vitae to the Board in another process within the preceding 24 months.
- 6.11 No differentiation will be made between the rates for preparation and attendance. Travel time spent working should be claimed as preparation time with the appropriate time documented. There will be no compensation for other hours spent in travel, although reasonable disbursements for travel costs will be allowed as set out in section 7.01.
- 6.12 The Board may award costs to a party on the basis of a fixed amount per day for participation in workshops, working groups, advisory groups, stakeholder meetings, technical conferences, issues conferences, settlement conferences or pre-hearing conferences.

## **7. DISBURSEMENTS**

- 7.01 Reasonable disbursements, such as photocopying, transcript costs, travel and accommodation, directly related to the party's participation in the process, will be allowed in accordance with the Board's Tariff, including as applicable the principles and rules set out in the *Travel, Meal and Hospitality Expenses Directive* referred to in the Tariff.
- 7.02 A party may be compensated for the reasonable disbursements of an employee or officer of the party which are necessarily and directly incurred as a result of participation in a Board process.
- 7.03 Itemized receipts must be submitted with the cost claim (credit card slips or statements are not sufficient). If an itemized receipt cannot be provided, a written explanation must be submitted to explain why the receipt is unavailable and a description itemizing and confirming the expenses must be provided.

## **8. GROUP INTERVENTIONS**

- 8.01 In a case where a number of eligible parties have joined together for the purpose of a combined intervention, the Board will normally allow reasonable expenses

necessary for the establishment and conduct of such a group intervention.

- 8.02 The reasonable costs of meeting room rentals and associated costs required for the formation and coordination of a group, and which are specific to the intervention, will normally be allowed. The travel costs and personal expenses of group members attending such meetings will, however, normally be excluded.
- 8.03 Attendance at a hearing should be limited to the number of representatives required to effectively monitor and provide input into the processes. When groups are not represented by counsel and/or experts, the reasonable out of pocket disbursements directly incurred for the attendance of a maximum of four group members will normally be accepted. When the group is represented by counsel and/or experts, the reasonable out of pocket disbursements incurred for the attendance of a maximum of two group members, as advisors, will normally be accepted.

## **9. HARMONIZED SALES TAX (“HST”)**

- 9.01 A party will be compensated for the HST it pays on goods and services which are determined by the Board to be eligible for an award of costs.
- 9.02 To be compensated, a party shall provide the following required HST information when completing the online filing:
  - (a) the tax status of the party, e.g. full registrant, unregistered, qualifying non-profit, zero-rated, tax exempt, etc;
  - (b) the HST registration number, if any; and
  - (c) the details of costs incurred showing the HST related to each item of cost.

## **10. COST CLAIMS**

- 10.01 All cost claims will be subject to review by the Board for compliance with the Board’s Tariff, including as applicable the principles and rules set out in the *Travel, Meal and Hospitality Expenses Directive* referred to in the Tariff.
- 10.02 Cost claims pertaining to a process must be accompanied by a letter addressing the reasons why costs should be awarded, and shall be filed with the Board and served on the party(ies) paying the cost awards within the time and in the manner determined by the Board in respect of the process.
- 10.03 Cost claims shall be prepared and filed through the Board’s online cost claim filing system.
- 10.04 Where a party who is a natural person represents himself or herself in a process and claims costs, the Board may accept the claim in the form of a letter providing details of the costs directly and necessarily incurred by the individual as a result of his or her participation in the process.

## **11. COST ASSESSMENT**

- 11.01 A party which the Board has determined shall pay the costs shall have 10 calendar



days from the date of submission by a party claiming costs to file any objection to any aspect of the costs claimed. One copy of the objection is to be filed with the Board and one copy is to be served on the party against whose claim the objection is being made.

11.02 The party claiming costs shall have 7 calendar days from the date of the filing of an objection to file a reply with the Board and to serve a copy on the objecting party.

11.03 The Board will then issue its Decision and Order directing to whom and by whom costs are to be paid and detailing the costs to be awarded to each party. The Decision and Order may also address the Board's costs.

## **12. SPECIAL PROVISIONS FOR CONSULTATION PROCESSES INITIATED BY THE BOARD**

12.01 Persons who will be ordered to pay cost awards for any consultation process initiated by the Board will be informed of their obligation at the commencement of the consultation process.

12.02 If the persons being ordered to pay the cost awards are part of a class of regulated entities who have to pay cost assessments under section 26 of the Act, the cost awards may be apportioned between the members of the class in the same manner as costs are apportioned within the class under the Board's Cost Assessment Model or as otherwise determined by the Board.

12.03 If the persons being ordered to pay cost awards are part of more than one class of regulated entities who have to pay cost assessments under section 26 of the Act, the cost awards may be apportioned between the classes in the same manner as costs are apportioned between the classes under the Board's Cost Assessment Model or as otherwise determined by the Board.

12.04 In some cases, the Board may act as a clearing house for all payments of cost awards in consultation processes initiated by the Board. In those cases, invoices for cost awards will be sent out to regulated entities who have to pay cost assessments under section 26 of the Act at the same time as the invoices for cost assessments are sent out. The persons paying the cost awards shall submit their payment to the Board in accordance with the invoices issued by the Board. Payment of these invoices will be due at the same time that cost assessments are due.

12.05 The Board will not send out the payments for the cost awards to persons eligible to receive the cost awards until at least eighty percent (80%) of the total amount owed by the payor(s) has been received by the Board.

## **13. PUBLICATION OF COST AWARD INFORMATION**

13.01 The Board may, in its discretion, publish a summary of the costs awarded to each party in relation to that party's participation in Board processes. This publication is in addition to the publication of information pertaining to cost award eligibility and cost awards within the scope of a given process.

**14. EFFECTIVE DATE**

14.01 This revised Practice Direction on Cost Awards shall come into effect on April 1, 2023, and applies to all cost eligibility requests, cost claims and other cost award-related materials filed on or after that date.

## APPENDIX "A"

### COST AWARD TARIFF

**NOTE: All tariffs are exclusive of applicable HST.**

#### Legal Fees - Hourly Rates

Provider of Legal Services	Completed Years Practising	Maximum Hourly Rate
Lawyer	20+	\$330
Lawyer	11 to 19	\$290
Lawyer	6 to 10	\$230
Lawyer	0 to 5	\$170
Articling Student/Paralegal	-	\$100

#### Analyst/Consultant Fees - Hourly Rates

Consultants are experts in aspects of business or science such as finance, economics, accounting, engineering or the natural sciences such as geology, ecology, agronomy, etc.

Time spent providing expert evidence, providing expert professional advice to the Board, or acting as an expert witness will be compensated at the appropriate analyst/consultant rate set out in the table below. A copy of the analyst/consultant's curriculum vitae must be attached to the cost claim if the analyst/consultant has not already provided a curriculum vitae to the Board in another process within the preceding 24 months.

If a consultant provides case management services, these hours are to be listed separately and will be compensated at the case management rate.

#### Analyst/Consultant Fees (including Case Management)

Provider of Service	Years of Relevant Experience	Maximum Hourly Rate
Analyst/consultant	20+	\$330
Analyst/consultant	11 to 19	\$290
Analyst/consultant	6 to 10	\$230
Analyst/consultant	0 to 5	\$170
Case Management	-	\$170

## **Disbursements**

Reasonable disbursements, such as photocopying, transcript costs, travel and accommodation, directly related to the party's participation in the process, will be allowed, as applicable in accordance with the principles and rules set out in the *Travel, Meal and Hospitality Expenses Directive* which is available on the Board's [website](#). Except as provided in section 7.03 of this Practice Direction, itemized receipts substantiating the disbursement must accompany the cost claim.