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**ELECTRICAL SAFETY AUTHORITY REVIEW PANEL FOR LICENSING**

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**BETWEEN:**

**NEUFELD ELECTRIC  
(the "Applicant")**

**- and -**

**DIRECTOR, LICENSING AND CERTIFICATION  
(the "Director")**

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**SUPPLEMENTARY DECISION**

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**Review Panel:** Roy Hicks  
**Date:** January 18, 2008  
**File Number:** 7005820  
**Appeal Number:** NOAL07-050

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**APPEARANCES**

Director, Licensing, and Certification	)	Bernie Leblanc, Counsel
	)	Lucy Impera, Director, Licensing
	)	and Certification
	)	Wendy Reid, Project Coordinator
Neufeld Electric	)	John Neufeld, Proprietor
	)	
	)	

## INTRODUCTION

[1] A hearing in this matter was held on Thursday, October 18, 2007 before the Review Panel comprised of me sitting alone. The hearing was completed and a Decision was issued by me dismissing the appeal on November 1, 2007. Subsequently, counsel for the Director, Mr. Leblanc, wrote to me on November 27, 2007 advising that the Director is seeking costs in light of the disposition of the Applicant's appeal. Mr. Leblanc did state during the hearing that he was reserving the right to make submissions on the issue of cost in the event that the Director was successful on the appeal.

[2] During the hearing, Mr. Leblanc proposed on behalf of the Director that any submissions on costs be in writing and the Applicant stated he had no objection to that process.

[3] The Director of Appeals wrote a letter to the Applicant dated November 12, 2007 and provided the Applicant with a copy of Mr. Leblanc's letter and his submissions on the issue of costs. The Applicant was invited to make his own submissions on the issue of costs and to provide these in writing to the Director of Appeals by not later than November 26, 2007 for consideration by the Review Panel. I am advised that, as of the date of this decision, the Applicant has not responded to the November 12, 2007 letter from the Director of Appeals and has not made any submissions on the issue of costs.

[4] The Review Panel has the jurisdiction to order costs in an appropriate case. Section 2(12) of Ontario Regulation 122/06 under the *Safety and Consumer Statues Administration Act*, 1996 states:

*The Review Panel may make orders as to costs payable by the parties to the appeal and orders requiring the parties to the appeal to reimburse the Authority for its expenses incurred in respect of the appeal.*

[5] In addition, the Rules of Procedure address the issue of costs. Rule 17 provides as follows:

*Rule 17. Costs - Applies to Proceedings before the Review Panel*

*17.1 Pursuant to subsection 2(10) of the Regulation, with notice to the other parties, the Review Panel may make an order of costs as it considers appropriate in the circumstances, if it is satisfied that the appeal is frivolous or vexatious.*

*17.2 The Review Panel in determining whether a party has acted unreasonably, frivolously or vexatious, shall consider all of the circumstances, including, without limiting the generality of the foregoing, circumstances such as a party,*

- (a) failing to attend a hearing before the Review Panel or to send a representative when properly given notice;*

- (b) *failing to comply in a timely manner with a procedural order or direction of the Review Panel or presiding officer at a pre-hearing conference resulting in undue prejudice or delay to another party or parties in the proceedings before the Review Panel;*
- (c) *failure to comply in a timely manner with the disclosure requirements as set out in these Rules including, without limiting the generality of the foregoing, the disclosure requirements respecting documents, particulars, or constitutional issues;*
- (d) *knowingly presenting false or misleading evidence; or*
- (e) *attempting to unreasonably delay or prolong the duration of a hearing.*

*17.3 Where the Review Panel unanimously finds that a party has acted unreasonably, frivolously or vexatious, the Review Panel may order that party pay the costs of another party or parties to the proceedings as determined under Rule 17.4.*

*17.4 Where the Review Panel determines that an order for costs may be made under Rule 17.3,*

*1. the Review Panel when determining the appropriate award of costs shall consider all the circumstances, including, without limiting the generality of the foregoing,*

- (a) *the seriousness of any misconduct; and*
- (b) *the amount of costs incurred by the party requesting costs; and*
- (c) *the conduct of the party(s) other than the party requesting costs.*

*2. the amount of costs shall not exceed,*

- (a) *where the Review Panel has not commenced a hearing, the sum of \$400.00; or*
- (b) *where the Review Panel has commenced a hearing, the sum of \$800.00 multiplied by the number of days that the Review Panel conducts a hearing of the matter, with any part day being considered a full day for the purpose of this calculation of costs.*

*17.5 Pursuant to subsection 2(12) of the Regulation, the Review Panel may make orders as to costs payable by the parties to the appeal and orders requiring the parties to the appeal to reimburse the Authority for its expenses incurred in respect of the appeal.*

[6] I have carefully considered the submissions made on behalf of the Director. I am satisfied that in the circumstances of this case it is not appropriate to make an order as to costs. The conduct of the Applicant in this matter, together, with the success of the Director on the merits of the appeal does not provide a sufficient basis for an order as to costs. The Applicant's

conduct did not extend the proceedings in this matter, the hearing taking less than one day. I do not find that the Applicant's conduct in this matter amounted to bad faith or that there is any other basis on which an order of costs would be appropriate. Accordingly, the Director's request for an order for costs is hereby dismissed.

Dated January 18, 2008

Roy Hicks