



EB-2007-0707

IN THE MATTER OF sections 25.30 and 25.31 of the *Electricity Act, 1998*;

AND IN THE MATTER OF cost award eligibility for certain intervenors in an application by the Ontario Power Authority for review and approval of the Integrated Power System Plan and proposed procurement processes.

Decision on Cost Eligibility and Direction to Parties

The Ontario Power Authority (the "OPA") filed an application with the Ontario Energy Board dated August 29, 2007 under the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A. The applicant is seeking an order of the Board approving the Integrated Power System Plan (the "IPSP") and certain procurement processes. The Board assigned file number EB-2007-0707 to this application.

Section 30 of the *Ontario Energy Board Act, 1998*, S.O. 1998 C. 15 Schedule B gives the Board the power to order a person to pay all or part of a person's costs of participating in a proceeding before the Board. In this case, the OPA, as the applicant, will be the entity paying the costs of the participation of eligible intervenors, to the extent required by the Board in its cost order.

Under the Board's *Rules of Practice and Procedure*, parties seeking intervention in a proceeding are required to indicate, in their letter requesting intervenor status, whether the party will be seeking an award of costs. The letter must be copied to the applicant, and the applicant has fourteen days to object to the request for cost eligibility. In this proceeding, 35 intervenors asked to be found eligible for an award of costs. The OPA did not object to any of the requests for cost eligibility.

The Board's *Practice Direction on Cost Awards* sets out the following policy regarding cost eligibility:

- 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 regulated services;
 - (b) primarily represents a public interest relevant to the Board's mandate; or
 - (c) is a person with an interest in land that is affected by the process.
- 3.05 Parties not eligible for a cost award include:
- (a) applicants before the Board;
 - (b) transmitters, wholesalers, generators, distributors, and retailers of electricity, either individually or in a group;
 - (c) transmitters, distributors, and marketers of natural gas, and gas storage companies, either individually or in a group;
 - (d) the IESO; and
 - (e) the Ontario Power Authority.

In addition, the Practice Direction articulates the discretion the Board exercises in the application of the policy:

- 3.04 In making a determination whether a party is eligible or ineligible, the Board may also consider any other factor the Board considers to be relevant to the public interest.
- 3.06 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.

The following parties are eligible for costs pursuant to section 3.03 of the Board's Practice Direction. They either primarily represent the direct interests of consumers in relation to regulated services, or primarily represent a public interest relevant to the Board's mandate in this proceeding:

- Association of Major Power Consumers of Ontario
- Building Owners and Managers Association
- Canadian Chemical Producers Association
- Canadian Manufacturers and Exporters

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- City of Thunder Bay
- City of Toronto
- Consumers Council of Canada
- Council of Canadians
- Energy Probe Research Foundation
- First Nations Energy Alliance
- Green Energy Coalition
- Industrial Gas Users Association
- Lake Ontario Waterkeeper
- Metis Nation of Ontario
- National Chief's Office on behalf of the Assembly of First Nations
- Nishnawbe Aski Nation
- Northwatch
- Northwestern Ontario Municipal Association
- Ontario Mining Association
- Ontario Sustainable Energy Association
- Pembina Institute
- Pollution Probe
- Provincial Council of Women of Ontario
- Saugeen Ojibway Nations
- School Energy Coalition
- Township of Atikokan
- Vulnerable Energy Consumers Coalition

The following parties would not usually be eligible for an award of costs, due to their inclusion in the list of ineligible parties in section 3.05 of the Practice Direction.

- Association of Power Producers of Ontario
- Canadian Wind Energy Association
- Electricity Distributors Association

- Ontario Waterpower Association

However, the Board has found that special circumstances exist in this proceeding that would allow these parties to be eligible. In addition to the parties normally eligible pursuant to the Board's Practice Direction, the Board finds intervenors that are not-for-profit, that have established an identifiable constituency and that represent a combined, significant expertise in the matters relevant to this application to be eligible for costs. The participation of these parties will assist the Board in developing a better understanding of the important issues of broad impact that are before it for review and determination in this proceeding.

The following parties have been found to be ineligible for an award of costs, as they do not represent an identifiable public, as opposed to private, interest:

- CVRD Inco
- Kilowatt Corporation
- Xstrata Canada Corporation

Purely private entities, intervening on their own behalf, may provide insight, but do not represent a broad enough interest or perspective to merit ratepayer funding. While there could be direct economic benefits under certain IPSP outcomes for any intervenor or their constituents, these intervenors do not provide the breadth and balance of interests and expertise that merits public funding for participation.

The Electricity Market Investment Group also sought cost eligibility, but this intervenor did not submit sufficient information for the Board to find it was eligible for costs. The Board therefore denies costs to the Electricity Market Investment Group. This intervenor may submit further information to the Board if it chooses to do so, and the Board may reconsider its denial of costs.

Intervenors are reminded that a cost award may not necessarily cover all an eligible intervenor's costs of participation in the proceeding. Recovery of one hundred percent of costs should not be relied upon. Section 5 of the Practice Direction sets out some of the factors the Board may consider in determining the amount of costs awarded to a party:

- 5.01 In determining the amount of a cost award to a party, the Board may consider, amongst other things, whether the party:
- (a) participated responsibly in the process;
 - (b) asked questions on cross examination which were unduly repetitive of questions already asked by other parties;
 - (c) made reasonable efforts to ensure that its evidence was not unduly repetitive of evidence presented by other parties;
 - (d) made reasonable efforts to co-operate with other parties in order to reduce the duplication of evidence and questions on cross-examination;
 - (e) made reasonable efforts to combine its intervention with that of similarly interested parties;
 - (f) contributed to a better understanding by the Board of one or more of the issues addressed by the party;
 - (g) complied with directions of the Board including directions related to the pre-filing of written evidence;
 - (h) addressed issues in its written or oral evidence or in its questions on cross-examination or in its argument which were not relevant to the issues determined by the Board in the process;
 - (i) engaged in any other conduct that tended to lengthen unnecessarily the duration of the process; or
 - (j) engaged in any other conduct which the Board found was inappropriate or irresponsible.

As it has done in the past, the Board will require co-operation among parties with similar interest, and will consider any lack of co-operation when determining the amount of a cost award. The Board notes the following examples:

- The Green Energy Coalition, the Ontario Sustainable Energy Association and the Pembina Institute have co-operated to hire one counsel and make one submission to the Board. The Board expects other intervenors with an interest in environmental and sustainable energy issues to co-operate with this group and each other to eliminate duplication in their presentations to the Board.
- Representatives of large electricity customers, such as the Association of Major Power Consumers of Ontario, the Building Owners and Managers Association, the Canadian Chemical Producers Association, the Ontario Mining Association and the Canadian Manufacturers and Exporters should be able to co-operate to put forward a joint presentation on some issues.

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- The Northwestern Ontario Municipal Association, the City of Thunder Bay and the Township of Atikokan appear to have almost identical interests in the proceeding, and the Board will expect them to co-operate.

The Board expects all intervenors, whether specifically mentioned in this decision or not, to co-operate to create a useful and focused record for the Board.

The Board recognizes that many cost eligible intervenors will not have sufficient resources to finance their intervention through the entire proceeding. Accordingly, the Board will invite the submission of cost claims at the conclusion of various stages of the proceeding. In Procedural Order number 1, the Board provided for oral submissions on the issues list. The Board invites eligible cost claimants to file an initial cost claim at the conclusion of that oral proceeding (whether the claimant attends the oral portion of the proceeding or not). Claimants must submit cost claims in accordance with the Board's Practice Direction on Cost Awards and ensure their claims are consistent with the Board's required forms and recently revised Cost Awards Tariff.

DATED at Toronto, December 14, 2007.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary