



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 PHASE 2 COST ELIGIBILITY

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. The Board divided the proceeding into two phases. Phase 1 is complete. Interventions and applications for cost eligibility were invited for phase 2 in a notice published in newspapers throughout Ontario.

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.

Thirty-five parties were determined by the Board to be eligible for an award of costs in phase 1. These parties are automatically eligible for an award of costs in phase 2 and did not have to reapply. In phase 2 of this proceeding, ten additional 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 who have applied for costs in phase 2 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:

- Alliston & District Environment Watch
- Lake Huron Region Chiefs
- Municipality of Port Hope
- New Tecumseth Environment Watch
- Nipissing First Nation
- Ontario Federation of Agriculture
- Serpent River First Nation
- Society of Energy Professionals

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:

- Harten Consulting
- Xylene Power

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.

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.
- Several First Nations have intervened and been granted costs. The Board expects these intervenors to co-operate where their interests coincide.

The Board expects Alliston & District Environment Watch and New Tecumseth Environment Watch to co-operate in this proceeding. As noted previously, the Board

will consider the degree of co-operation when determining the amount of the cost award. Further, on May 20, 2008, New Tecumseth Environment Watch provided the Board with a list of items that it planned to research and for which it planned to seek award of costs. Many of these items are outside the scope of the Board approved IPSP Issues List. The Board will not award costs for work done on any issues that are not included in the Board approved IPSP Issues List. The Board also cautions New Tecumseth Environment Watch that the Board may not award costs for research and experts which directly duplicate the work commissioned by other intervenors. We therefore recommend that New Tecumseth Environment Watch contact other intervenors to determine if there is duplication in planned research and engagement of experts. The list of Registered Intervenors in the IPSP proceeding and their contact information is available on the Board's website.

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.

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, May 26, 2008.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary