



EB-2011-0043

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

AND IN THE MATTER OF cost award eligibility for
interested parties in a consultation process to develop a
regulatory framework for regional planning by electricity
transmitters and electricity distributors.

BEFORE: Karen Taylor
Presiding Member

Paula Conboy
Member

DECISION ON COST ELIGIBILITY

On April 1, 2011, the Ontario Energy Board (the "Board") issued a letter to interested parties initiating a consultation process to assist the Board in the development of a regulatory framework for regional planning. That letter also notified interested parties that cost awards would be available to eligible persons under section 30 of the *Ontario Energy Board Act, 1998* in relation to their participation in this consultation process, and that any costs awarded would be recovered from licensed rate-regulated electricity transmitters and licensed rate-regulated electricity distributors based on their respective transmission or distribution revenues.

The Board received requests for cost eligibility from the following participants:

- Association of Major Power Consumers in Ontario ("AMPCO");
- Association of Power Producers of Ontario ("APPPrO");
- Canadian Manufacturers & Exporters ("CME");
- City of Thunder Bay ("Thunder Bay");
- Consumers Council of Canada ("CCC");

- Energy Probe Research Foundation (“Energy Probe”);
- London Property Management Association (“LPMA”);
- National Chief’s Office on behalf of the Assembly of First Nations (“NCO”);
- Nishnawbe Aski Nation (“NAN”);
- Northwestern Ontario Associated Chambers of Commerce (“NOACC”);
- Northwestern Ontario Municipal Association (“NOMA”);
- Ontario Sustainable Energy Association (“OSEA”);
- Pollution Probe;
- Town of Atikokan (“Atikokan”); and
- Vulnerable Energy Consumers Coalition (“VECC”).

The cost eligibility requests from APPrO and VECC were filed after the deadline set for that purpose in the Board’s April 1, 2011 letter. The Board has determined that it will accept those requests notwithstanding their late filing.

The Board’s April 1, 2011 letter made provision for the filing of objections by electricity transmitters and electricity distributors in relation to any of the requests for cost award eligibility. The Board did not receive any objections from transmitters or distributors within the deadline set for that purpose in the Board’s letter.

Based on the criteria set out in section 3 of the Board’s *Practice Direction on Cost Awards* (the “Practice Direction”), the Board has determined that the following participants are eligible for an award of costs in this consultation process: AMPCO; CME; CCC; Energy Probe; LPMA; NCO; NAN; Pollution Probe; and VECC.

APPrO would not usually be eligible for an award of costs, due to its inclusion in the list of ineligible parties in section 3.05 of the Practice Direction (“...generators...either individually or in a group”). Under section 3.06 of the Practice Direction, however, such a participant may nonetheless be eligible for a cost award if the participant is a customer of the applicant. Generators are customers of both transmitters and distributors, who in turn for cost awards purposes are considered to be the applicants in the context of this consultation. As stated in the Board’s April 1, 2011 letter, this consultation (i) is aimed at promoting the cost-effective development of electricity infrastructure that may be required to accommodate, among others, the connection of renewable generation facilities; and (b) will consider the appropriate attribution or

assignment of cost responsibility for optimized infrastructure solutions. Given the impact that this process may have on prospective generators and given the unique perspective that generators will bring to this process, the Board will allow APPrO to be eligible for cost awards in this consultation.

OSEA is an association whose membership consists predominantly of commercial service providers, generators or members that have plans to generate electricity in the future. The Board finds that OSEA is, by virtue of its membership, *prima facie* not eligible to apply for an award of costs under the Practice Direction.¹ However, the Board finds that OSEA may, like APPrO, also provide an important and unique perspective in relation to the Board's mandate in this consultation and will therefore allow OSEA to be eligible for an award of costs in this instance.

Thunder Bay, Atikokan, NOMA and NOACC each individually applied for cost award eligibility, and each also indicated in its filing an intention to cooperate and join with the other three in respect of their participation in this consultation process.

The Board finds that Thunder Bay and Atikokan, each of which is the effective owner of an electricity distributor, are not eligible for an award of costs.

The Board notes that NOMA's members are comprised of municipalities and townships located in the Northwestern region of the Province, some of which own an electricity distributor but most of which do not. NOMA's letter requesting cost award eligibility indicates that it: (i) represents the municipal communities throughout the Northwest Region; (ii) understands and can speak to the direct interests of the ratepayers in that Region; (iii) is keenly aware of the geographical and technical issues relating to electricity generation and transmission/distribution in the Region; and (iv) will be able to provide valuable insight into not only issues related to energy but also to environmental and other social imperatives, including social imperatives that are geographical, economic and commercial. Based on NOMA's letter, the Board does not believe that NOMA primarily represents the direct interests of consumers (ratepayers) in relation to regulated services. The Board notes that this consultation is relatively narrow in scope, the focus being on the development of regional planning requirements that will apply in

¹ This is consistent with the finding made in two other recent Board decisions regarding OSEA's eligibility for an award of costs; specifically, the April 4, 2011 Decision on Cost Eligibility in relation to the smart grid consultation (EB-2011-0004) and the April 7, 2011 Decision on Motion to Review in relation to the Ontario Power Authority fees proceeding and two applications pertaining to conservation and demand management (EB-2010-0279/EB-2010-0331/EB-2010-0332).

circumstances where a localized geographic issue can be resolved through more than one transmission and/or distribution solution. Based on NOMA's letter, the Board does not believe that NOMA represents a public interest relevant to the Board's mandate in the context of the specific scope of this consultation. The Board therefore finds that NOMA is not eligible for an award of costs in this consultation.

NOACC's members are Chambers of Commerce representing the business communities in their respective Northwestern Ontario regions. NOACC's letter requesting cost award eligibility indicates that it: (i) represents the member businesses of its member Chambers of Commerce throughout the Northwest Region; (ii) understands and can speak to the direct business interests of the ratepayers in that Region; (iii) is keenly aware of the geographical and technical issues relating to electricity generation and transmission/distribution in the Region; and (iv) will be able to provide valuable insight into not only issues related to energy but also to environmental and other social imperatives, including social imperatives that are geographical, economic and commercial. Under section 3.03 of the Practice Direction, a participant is eligible to apply for a cost award where, among other things, the participant represents the direct interests of ratepayers, provided that the focus is in relation to regulated services. Based on NOACC's letter, although NOACC may be in a position to speak to the business interests of ratepayers in Northwestern Ontario, it does not appear to the Board that NOACC's participation in this consultation is to primarily represent the direct interests of ratepayers *in relation to regulated services*. Based on NOACC's letter, for the same reasons as those given above in respect of NOMA the Board also does not believe that NOACC represents a public interest relevant to the Board's mandate in relation to the specific scope of this consultation. The Board therefore finds that NOACC is not eligible for an award of costs in this consultation.

Representatives of residential consumers (CCC and VECC) and of large users (AMPCO) have been determined to be eligible for an award of costs in this consultation, and the Board is interested in the unique perspective that might be offered by small commercial or business consumers. If NOACC is in a position to participate in this consultation for the purposes of representing this class of consumers in their capacity as ratepayers (i.e., "in relation to regulated services"), the Board would be prepared to consider a further request for cost award eligibility on that basis.

The Board's April 1, 2011 letter indicated that cost awards will be available to eligible persons, initially in relation to their participation in the stakeholder meeting scheduled

for May 12, 2011 to a maximum of actual meeting time plus 50% of meeting time for preparation and reporting. The Board notes that certain participants have indicated in their cost award eligibility requests that more than one person will or may attend the stakeholder meeting on their behalf. The Board takes this opportunity to confirm that, except where expressly noted otherwise, cost awards are available on a “per eligible participant” (i.e., per association) basis. The Board also reminds participants that it expects that they will utilize professional service providers in a responsible and judicious manner, that senior professionals will provide services on a cost-effective basis and that, where numerous professionals are engaged by a participant, their aggregate claim will not be materially higher than for other participants.

The Board also will expect co-operation among participants with similar interests, and will consider any lack of cooperation when determining the amount of a cost award.

ISSUED at Toronto, May 4, 2011
ONTARIO ENERGY BOARD

Karen Taylor
Presiding Member

Paula Conboy
Member