



EB-2009-0120

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

AND IN THE MATTER OF a review of an application by Yellow Falls Power Limited Partnership for an Order granting leave to construct a transmission line connecting a 16 megawatt waterpower project to the transmission system of Hydro One Networks Inc.

BEFORE: Cynthia Chaplin
Presiding Member

Ken Quesnelle
Member

Paul Sommerville
Member

DECISION AND ORDER ON COST AWARDS

Yellow Falls Power Limited Partnership ("YFP") filed an application with the Ontario Energy Board (the "Board") dated April 27, 2009 under section 92 of the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B. The Applicant applied for an order of the Board granting leave to construct transmission facilities connecting a 16 megawatt run-of-the river waterpower generation station located at Yellow Falls to the transmission system owned by Hydro One Networks Inc. ("Hydro One"). The Project consists of 25 kilometres of 115 kilovolt ("kV") overhead transmission line, a customer transformer station stepping up voltage from 13.8 kV to 115 kV, and a customer switching station at the point of interconnection with Hydro One's transmission system. The Application was assigned Board File No. EB-2009-0120.

The Wabun Tribal Council (“WTC”) and Tanykwa Tagamou Nation (“TTN”) were granted intervenor status and were found to be eligible to apply for an award of costs.

The Board issued its Decision and Order on the application on December 16, 2009, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by YFP.

On December 16, 2009 WTC sent a letter to the Board requesting an extension of the deadlines for filing its cost claim from December 29, 2009 until January 8, 2010. On December 18, the Board granted WTC its request and issued a new schedule for all parties for submission of cost claims, any objections by the YFP, and reply submission by intervenors.

On January 5, 2010, the Board received one cost claim from WTC. TTN did not file a cost claim.

Position of Parties

WTC’s cost claim sought an award of \$19,317.83, which included 55.4 hours for counsel fees.

By letter dated January 13, 2010, YFP raised some concerns regarding the cost claim of the WTC and requested that WTC’s claim for compensation for legal counsel fees should be reduced to 26.2 hours for total fees of \$8,646, plus disbursements as claimed of \$121.66.

YFP submitted that WTC’s cost claim should be reduced to eliminate all costs dealing with aboriginal consultation issues beyond the public interest criteria (price, reliability and quality of electrical service). YFP further submitted that WTC should only be compensated for costs related to reviewing the Application and Pre-Filed Evidence and for answering interrogatories posed to WTC. YFP noted that WTC should not be allowed to recover any costs in this proceeding related to consultation issues that were found to be within the scope of the EA process.

On January 19, 2010, WTC replied to YFP's letter indicating that the entire cost claim should be allowed. WTC stated that:

- Any restrictions on submissions in Procedural Order No.1 were merely preliminary guidance;
- They were in any case qualified so as to apply only to matters "within the scope of the EA process"; the application included a variety of matters;
- Restrictions in Procedural Order No. 1 were superseded by the requirements of Procedural Order No. 3 and by the Decision;
- A reasoned determination of this issue by the Board was in the public interest.

Board Findings

The Board notes YFP's views. The Board is also concerned with ensuring that costs claims are appropriate. The Board is of the view that WTC's costs in relation to the issue of Aboriginal Consultation were in response to the Board's specific request for submissions on the issue. The Board finds that WTC participated responsibly and contributed to the Board's understanding and consideration of the issues. The Board therefore finds that WTC's cost claim is reasonable in the circumstances.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Yellow Falls Power Limited Partnership shall immediately pay Wabun Tribal Council \$19,317.83.
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Yellow Falls Power Limited Partnership shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, February 10, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary