



EB-2011-0140

IN THE MATTER OF sections 70 and 78 of the *Ontario Energy Board Act 1998*, S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF a Board-initiated proceeding to designate an electricity transmitter to undertake development work for a new electricity transmission line between Northeast and Northwest Ontario: the East-West Tie Line.

BEFORE: Cynthia Chaplin
Presiding Member

Cathy Spoel
Member

DECISION ON INTERVENTION AND COST AWARD ELIGIBILITY

March 30, 2012

1.0 INTRODUCTION

The Ontario Energy Board has initiated a proceeding to designate an electricity transmitter to undertake development work for a new electricity transmission line between Northeast and Northwest Ontario: the East-West Tie Line. The Board has assigned File No. EB-2011-0140 to the designation proceeding.

On February 2, 2012, the Board issued a Notice of Application for the proceeding.

On March 9, 2012, the Board issued Procedural Order No. 1, granting intervenor status to the seven transmitters registered in the proceeding and identifying each

of the 22 entities from whom the Board received a request for intervenor status. The Board has since also received an intervention request from Canadian Manufacturers and Exporters and a joint intervention request from the Municipality of Wawa and the Algoma Coalition.

2.0 REQUESTS

The 24 parties (or, in some instances, groups of parties) listed below are requesting intervenor status in the proceeding. Those parties who are also requesting eligibility to receive cost awards are marked with an asterisk “ * ”. Each of the requests is posted on the Transmission Infrastructure: East-West Tie Line page of the Board’s website (www.ontarioenergyboard.ca/EWTie).

- Association of Major Power Consumers in Ontario *
- BayNiche Conservancy
- Building Owners and Managers Association Toronto *
- Canadian Manufacturers and Exporters *
- City of Thunder Bay and Northwestern Ontario Associated Chambers of Commerce and Northwestern Ontario Municipal Association *
- Consumers Council of Canada *
- Enbridge Inc.
- Energy Probe Research Foundation *
- Great Lakes Power Transmission EWT LP
- Great Lakes Power Transmission LP
- Hydro One Inc.
- Hydro One Networks Inc.
- Independent Electricity System Operator
- Lake Superior Action-Research-Conservation
- Métis Nation of Ontario *
- Municipality of Wawa and the Algoma Coalition *

- National Chief's Office on Behalf of the Assembly of First Nations *
- Nishnawbe-Aski Nation *
- Northwatch *
- Ojibways of Pic River First Nation *
- Ontario Power Authority
- Power Workers' Union
- School Energy Coalition *
- Mr. Rod Taylor

2.1 Interventions

Procedural Order No.1 provided an opportunity for parties to file an objection to the intervention request of any other party. AltaLink Ontario L.P. ("AltaLink") is the only entity that filed such an objection. AltaLink objects to the intervention requests of Great Lakes Power Transmission EWT LP ("GLPT EWTLP") and Hydro One Inc. and also requests a clarification as to the scope of Hydro One Networks Inc.'s ("HONI") intervention.

While AltaLink acknowledges that some EWT LP related entities have a legitimate interest in participating in the proceeding, AltaLink is concerned that the interventions of GLPT EWTLP and Hydro One Inc. will compromise the fairness of the designation process. AltaLink points out that five EWT LP related entities have intervened and submits that this may give EWT LP an unfair advantage in the process, in that one registered transmitter will, in effect, have multiple opportunities to participate at each stage of the proceeding.

AltaLink notes that, in their intervention requests, each of GLPT EWTLP and Hydro One Inc. indicates that it reserves the right to file evidence and interrogatories in support of EWT LP. AltaLink submits that this is inappropriate and these intervention requests should be denied. AltaLink further submits that the Board should err on the side of caution to ensure that new entrant transmitters have a fair and balanced chance to succeed in the designation process, given the objective cited in the Minister's letter of March 29, 2011 of encouraging new entrants to transmission in Ontario.

In its response to AltaLink's objection, GLPT EWTLTP maintains that it has a direct, legitimate interest in the proceeding, that it primarily intends to monitor the proceeding and that it is regularly the case that multiple parties before the Board share an identity of interest on matters in issue. In its response, Hydro One Inc., too, maintains that it has a legitimate and direct interest in the proceeding. GLPT EWTLTP and Hydro One Inc. each also point to regulatory efficiencies that may be gained by their being granted intervenor status; namely, in the sense of shared access to, and disclosure of, relevant information.

2.2 Cost Eligibility

The Board has received 13 requests for costs eligibility. These requests can be categorized into four broad categories:

- two coalitions representing municipalities: City of Thunder Bay, Northwestern Ontario Associated Chambers of Commerce and Northwestern Ontario Municipal Association ("Thunder Bay"); and Municipality of Wawa and the Algoma Coalition ("Wawa/Algoma");
- four parties representing First Nations and Métis: Métis Nation of Ontario; National Chief's Office on Behalf of the Assembly of First Nations; Nishnawbe-Aski Nation; and Ojibways of Pic River First Nation);
- seven parties representing ratepayers directly: Association of Major Power Consumers in Ontario; Building Owners and Managers Association Toronto; Canadian Manufacturers and Exporters; Consumers Council of Canada; Energy Probe Research Foundation; and School Energy Coalition; and
- northeastern regional public interest group: Northwatch.

On March 21, 2012, the Board sent correspondence to the Thunder Bay group and to the Wawa/Algoma group requesting information as to their memberships. The Board also requested further information from the Ojibways of Pic River First Nation regarding its relationship with Bamkushwada LP, a part owner of one of the registered transmitters. The parties each responded, providing the information requested.

3.0 BOARD FINDINGS

3.1 Interventions

The Board is guided by Rule 23.02 of the Board's *Rules of Practice and Procedure* in making its determination on the requests for intervenor status. That Rule states as follows:

23.02 The person applying for intervenor status must satisfy the Board that he or she has a substantial interest and intends to participate actively and responsibly in the proceeding by submitting evidence, argument or interrogatories, or by cross examining a witness.

The Board finds that all of the parties requesting intervenor status, including those who filed a late intervention request, meet the requirements of Rule 23.02 and are eligible to participate as intervenors in this proceeding.

Specifically, the Board is not prepared to deny GLPT EWTL and Hydro One Inc. intervenor status. The Board finds that each party has a substantial interest in the proceeding, thus satisfying the first part of the test for being granted intervenor status. The intervention requests of these two parties clearly indicate an awareness of the need to participate in a responsible manner. While the Board acknowledges the fairness concerns of AltaLink, those concerns can be addressed adequately through appropriate procedural requirements and direction of the Board, as the need arises.

The Board has considered AltaLink's request that the Board require HONI to clarify the scope of its intervention. The Board finds that the clarification sought by AltaLink can be addressed during phase 1 of the hearing, and does not require a specific order of the Board at this time.

The Board notes that some of the intervention requests appear to focus on challenging the need for the transmission line. The Board reminds all parties that the Board has proceeded with the designation process on the basis of the preliminary assessment of need provided by the Ontario Power Authority. The Board expects that a final determination relating to the need for the East-West Tie Line will be made as part of the future application for leave to construct (i.e.

not through the designation process). The Board will expect intervenors to limit their participation to those issues that are within the scope of the proceeding.

3.2 Cost Awards

The Board has considered each of the requests for cost award eligibility, including the late requests. In making its determination on the cost eligibility status of the requesting parties, the Board is guided by Section 3 of the *Practice Direction on Cost Awards*. The Board also notes that it has not received any objections to any of the requests for cost award eligibility.

Municipalities

Until recently, the Board has considered applications for cost eligibility from municipalities on a case-by-case basis, and has found them to generally be ineligible for costs. This is because, in part, municipalities and their associations have access to a revenue stream from their own constituent taxpayers to whom they are responsible and should therefore not be funded by ratepayers; in some instances, because they are owners of regulated distributors who are ineligible for costs; and, because the Board considers that municipalities do not primarily represent the direct interests of ratepayers in relation to regulated services.

On March 19, 2012, the Board issued a revised *Practice Direction on Cost Awards* which, in section 3.05(i), excludes government bodies, including municipalities, from eligibility. However, section 14.01 of the revised Practice Direction indicates that the revisions apply only to cost eligibility requests filed on or after March 19, 2012. Accordingly, the Board will consider the requests of the municipalities on the basis of the former Practice Direction.

The granting of cost eligibility is a matter for the Board's discretion and when making such a determination, the Board has a responsibility to ensure that cost eligibility is granted only in appropriate circumstances (those circumstances identified in section 3.03 of the Practice Direction) or special circumstances (in accordance with section 3.07 of the Practice Direction).

In the normal course, the Wawa/Algoma and Thunder Bay coalitions would be ineligible for costs for the reasons set out above. However, the Board finds that this proceeding presents a special circumstance in which it will grant cost eligibility to the coalitions representing municipal interests. The coalitions

representing municipalities in this case represent a public interest which is relevant to the Board's mandate in this particular proceeding. This public interest is not related to the role of municipalities as representatives of ratepayers or distributors; rather it is related to the role of municipalities in land use planning and development more generally in the region. Special circumstances arise in this proceeding given the location of the East-West Tie Line and the potential importance of the line for quality and reliability of electricity in the Northwest. In addition, this proceeding is about determining and applying criteria for purposes of designating a transmitter to conduct development work; we are therefore at the preliminary stage of the transmission project with the associated set of issues to be addressed. (For example, the Board would not expect these special circumstances to arise in the context of a leave to construct application.) It is also relevant that this is the first proceeding of its kind.

The Board grants the municipalities cost eligibility on the basis that they have formed two coalitions for purposes of intervention and cost eligibility, thereby controlling the level of their costs. The Board notes that the members of the Thunder Bay coalition will not be granted cost eligibility on an individual basis.

First Nations and Métis

The Board has considered the requests of the First Nations and Métis groups and will grant them cost eligibility as representatives of a public interest of significance in this proceeding.

The Ojibways of Pic River have identified a direct interest in one of the registered transmitters, and therefore in the normal course would be ineligible for an award of costs. However, the Board finds that there are special circumstances in this proceeding. By virtue of their geographic location, the Ojibways of Pic River First Nation will be directly affected by this proceeding regardless of which proponent becomes designated. Given this position which in some ways is comparable to that of a landowner, the Board will grant cost eligibility to the Ojibways of Pic River in this proceeding. However, the Ojibways of Pic River First Nation will only be eligible to recover costs related to their interests in land, and rights arising from those interests, in any proposed East-West corridor and not for costs related to their position as a part owner of one of the registered transmitters.

Ratepayers

The designation proceeding is merely the first major step in the development, construction and operation of a major transmission line that will extend roughly 400 kilometres from the Municipality of Wawa to the City of Thunder Bay. The purpose of this preliminary proceeding is to designate the best transmitter to undertake development work. The Board in its policy document *Framework for Transmission Project Development Plans* indicated that the designated transmitter would be able to recover the budgeted costs of development work for the transmission line that was the subject of a designation process. The Board also indicated that costs incurred in excess of the budgeted amounts would be subject to a prudence review. This proceeding has, therefore, a relatively narrow component in regard to cost implications for ratepayers. The focus of this proceeding is on selecting the applicant which offers best value for ratepayers taking into account a number of criteria. In addition, at this stage in the regulatory process for the transmission line, the interests of ratepayers are largely the same regardless of the particular constituency.

For these reasons, the Board will grant cost eligibility to each ratepayer intervenor which attended the all-party conference on March 23, 2012 (up to a maximum of 12 hours in total for preparation and attendance), and the Board will grant cost eligibility for the remainder of the proceeding to two ratepayer representatives: one low volume and one high volume. The Board considers that the intervenors in the low volume category are Consumers Council of Canada and Energy Probe Research Foundation. The intervenors in the high volume category are Association of Major Power Consumers in Ontario, Building Owners and Managers Association Toronto, Canadian Manufacturers and Exporters, and School Energy Coalition.

The Board will provide the parties in each of the low volume and high volume groups with an opportunity to consider whether to form a joint intervention for the purposes of cost eligibility or whether to agree on one representative intervenor for cost eligibility. If no agreement is reached amongst the relevant parties, then the Board will receive submissions from each party as to why it, individually, should be the costs-eligible party, and will determine which two intervenors will be eligible for costs.

Northwatch

The East-West Tie Line is a major piece of transmission infrastructure connecting the Northwest with the Northeast. Northwatch is a public interest organization concerned with environmental protection and social development in the Northeast. The Board finds that Northwatch represents an important public interest relevant to the designation proceeding and is, thus, eligible for a cost award.

THE BOARD ORDERS THAT:

1. Each of the parties listed in section 2.0 above is granted intervenor status.
2. Each of the following parties are eligible for cost awards: the coalition representing the City of Thunder Bay, Northwestern Ontario Associated Chambers of Commerce and Northwestern Ontario Municipal Association; the coalition representing the Municipality of Wawa and the Algoma Coalition; the Métis Nation of Ontario; the National Chief's Office on Behalf of the Assembly of First Nations; the Nishnawbe-Aski Nation; Northwatch; and, Ojibways of Pic River First Nation.
3. Consumers Council of Canada and Energy Probe Research Foundation shall advise the Board, either jointly or individually, with regard to which party, or whether a coalition of the parties, should be eligible for cost awards. If no agreement can be reached between these two parties, the Board will receive submissions from each party as to why it, individually, should be the costs-eligible party. Submissions must be received by the Board by April 10, 2012.
4. Association of Major Power Consumers in Ontario, Building Owners and Managers Association Toronto, Canadian Manufacturers and Exporters, and School Energy Coalition shall advise the Board, either jointly or individually, with regard to which party, or whether a coalition of two or more of the parties, should be eligible for cost awards. If no agreement can be reached amongst these parties, the Board will receive submissions from each party as to why it, individually, should be the costs-eligible party. Submissions must be received by the Board by April 10, 2012.

5. Notwithstanding paragraphs 3 and 4 above, each of Consumers Council of Canada, Energy Probe Research Foundation, Association of Major Power Consumers in Ontario, Building Owners and Managers Association Toronto, Canadian Manufacturers and Exporters, and School Energy Coalition is eligible for an award of costs up to a maximum of 12 hours if it attended the all party conference on March 23, 2012.

DATED at Toronto, March 30, 2012
ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary