



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 and Vice-Chair

Cathy Spoel
Member

**PHASE 1 DECISION AND ORDER
COST AWARDS**

September 17, 2012

Background

On February 2, 2012, the Ontario Energy Board issued notice that it was initiating 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 assigned File No. EB-2011-0140 to the designation proceeding.

On March 30, 2012, the Board issued its Decision on Intervention and Cost Award Eligibility. Procedural Order No. 2 issued on April 16, 2012 also dealt with the issues of interventions and cost award eligibility. As a result of these orders, certain parties are eligible to apply for cost awards in both phases of this designation proceeding and certain other parties are eligible to apply for limited cost awards relating to their attendance at an all party conference in Phase 1 of this designation proceeding.

In total, nine parties have been determined to be eligible to apply for cost awards in both phases of this designation proceeding. They are:

- the coalition representing the City of Thunder Bay, Northwestern Ontario Associated Chambers of Commerce and Northwestern Ontario Municipal Association (“City of Thunder Bay Coalition”);
- the coalition representing the Municipality of Wawa and the Algoma Coalition (“Algoma Coalition”);
- Consumers Council of Canada (“CCC”);
- Métis Nation of Ontario (“MNO”);
- National Chief's Office on Behalf of the Assembly of First Nations (“NCO”);
- Nishnawbe-Aski Nation (“NAN”);
- Northwatch;
- Ojibways of Pic River First Nation (“PRFN”); and
- School Energy Coalition (“SEC”).

Each of the following parties has been granted eligibility for an award of costs up to a maximum of 12 hours if it attended the all party conference in Phase 1 of this proceeding on March 23, 2012:

- Association of Major Power Consumers in Ontario (“AMPCO”);
- Building Owners and Managers Association Toronto (“BOMA”);
- Canadian Manufacturers and Exporters (“CME”); and

- Energy Probe Research Foundation (“Energy Probe”).

The cost awards to the eligible parties and the Board’s own costs will be recovered from licensed transmitters whose revenue requirements are recovered through the Ontario Uniform Transmission Rates, namely:

- Canadian Niagara Power Inc. (“CNPI”);
- Five Nations Energy Inc. (“FNEI”);
- Great Lakes Power Transmission LP (“GLPT”); and
- Hydro One Networks Inc. (“HONI”).

The costs will be apportioned between these licensed transmitters based on their respective transmission revenues as contained in the Uniform Transmission Rates and Revenue Disbursement Allocators attached as Exhibit 4.0 to rate order EB-2011-0268 dated December 20, 2011.

On July 12, 2012, the Board issued its Phase 1 Decision and Order, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by CNPI, FNEI, GLPT and HONI.

The Board received cost claims from all of the eligible participants listed above, except CME.

Board Findings on the Cost Claims of the Eligible Participants

The Board has reviewed the cost claims filed to ensure that they are compliant with the Board’s *Practice Direction on Cost Awards*, and reviewed the objections from HONI and the replies filed in answer to those objections.

The Board finds that the cost claims filed by the Algoma Coalition, CCC, MNO, NAN, NCO, SEC, AMPCO, BOMA and Energy Probe are within the approved limits set by the Board in its Decision on Intervention and Cost Award Eligibility.

City of Thunder Bay Coalition

The Board finds that it will reduce the cost claim made by the City of Thunder Bay Coalition. The costs claimed by the City of Thunder Bay Coalition amount to \$32,806.57, inclusive of \$1,533.82 in disbursements, and are based on 132.2 hours in aggregate.

In reviewing this claim the Board has taken the following factors into account. First, the Board finds that the cost claim includes disbursements that do not comply with the Board's *Practice Direction on Cost Awards*, as no receipts were provided for courier, telephone and postage charges. Second, the Board finds that the City of Thunder Bay Coalition demonstrated relatively limited participation in Phase 1 of the proceeding. While the Board appreciates the efforts of the Coalition to coordinate the participation of its varied and geographically distant membership, the Board finds that the Coalition's contributions to the proceeding were not commensurate with its cost claim. The Coalition's brief written submission addressed only a few issues and, although given the opportunity, the Coalition did not file a reply submission.

For these reasons, the Board finds that cost claim submitted by the City of Thunder Bay Coalition is disproportionate to its participation in Phase 1 of the proceeding. Accordingly, the Board will reduce the City of Thunder Bay Coalition's claim by \$5,000.00 and finds that the Coalition is awarded \$27,806.57.

Northwatch

The Board finds that Northwatch's cost claim includes disbursements that do not comply with the Board's *Practice Direction on Cost Awards* as no receipts were provided for telephone charges. The Board has accordingly reduced Northwatch's claim by \$26.98 and finds that Northwatch is awarded \$13,509.44.

PRFN

For several reasons, the Board will reduce the cost claim made by PRFN. PRFN's claimed costs are \$68,796.00, inclusive of \$3,126.00 in disbursements. The claim is based on 258.6 hours in aggregate. PRFN employed the services of four lawyers, three of whom are senior counsel.

The cost claim is reduced, in part, because it improperly includes disbursements that do not comply with the Board's *Practice Direction on Cost Awards*, as no receipts were provided for courier, telephone, postage and Westlaw service charges.

The cost claim is further reduced because it improperly includes disbursements for two employees of PRFN, Mr. Daryl Desmoulin and Mr. Joel Krupa. In accordance with section 6.05 of the *Practice Direction on Cost Awards*, a party will not be compensated for time spent by its employees or officers in preparing for or attending at Board processes.

PRFN's claim is more than double the next highest claim, more than triple the average amount of the claims of those participants focusing on similar issues in this proceeding (i.e. MNO, NCO, and NAN), and more than four times the average amount of all of the other eligible participants' cost claims. As well, PRFN's total number of hours claimed is almost twice that of the next highest and more than four times the average of the other eligible participants' total hours. Upon review of PRFN's dockets, it appears to the Board that there was unnecessary repetition of work, and an excessive number of hours spent, with several lawyers acting on behalf of PRFN on the same issues. While it is appropriate for senior lawyers to delegate tasks to more junior ones, this should result in fewer hours being spent by the senior lawyer. That was not the result in this case. The Board finds that the costs claimed by PRFN to be excessive and disproportionate to the value of its participation in Phase 1 of the proceeding.

The Board will reduce PRFN's claim by fifty percent and finds that PRFN is awarded \$34,398.00. The Board notes that this cost award is still substantially higher than any other award granted for Phase 1 of the designation proceeding.

Amounts Payable by the Licensed Transmitters

The amount payable by the licensed transmitters in relation to the costs awarded to each eligible participant is listed in Appendix A to this Decision and Order.

Process for Paying Cost Awards

The Board will use the process set out in section 12 of its *Practice Direction on Cost Awards* to implement the payment of the cost awards. Therefore, the Board will act as a clearing house for the payments of the cost award relating to this consultation process. Invoices will be issued to each transmitter at the same time as are invoices for cost assessments made under section 26 of the Act. The practice of the Board is to issue to each transmitter one invoice that covers all cost awards payable by the eligible participant for the relevant period. As a result, the invoice may cover cost awards payable in relation to a number of matters, including this one.

THE BOARD THEREFORE ORDERS THAT:

1. The amounts to be paid by each transmitter in relation to the costs awarded to each eligible participant are as set out in Appendix A to this Decision and Order.
2. The individual transmitters listed in Appendix A to this Decision and Order shall pay the costs awarded to each of the eligible participants as set out in Appendix A.
3. The individual transmitters listed in Appendix A to this Decision and Order shall pay the Board's costs of, and incidental to, this proceeding.
4. Payment of cost awards and of the Board's costs referred to in paragraphs 2 and 3 shall be made to the Ontario Energy Board in accordance with the invoice issued to the individual transmitter, and shall be due at the same time as cost assessments under section 26 of the Act are due.

DATED at Toronto, September 17, 2012.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix A

**To the Board's Decision and Order on Cost Awards
Dated September 17, 2012**

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Electricity Transmitters	Algoma Coalition	AMPCO	BOMA	City of Thunder Bay	CCC	EP	MNO	NCO	NAN	Northwatch	PRFN	SEC	Total
CNPI	35.90	10.86	15.83	98.15	58.31	11.34	78.29	79.56	86.59	47.68	121.42	79.50	\$ 723.43
FNEI	48.25	14.60	21.28	131.93	78.38	15.24	105.23	106.95	116.39	64.10	163.20	106.87	\$ 972.42
GLPT	251.34	76.03	110.87	687.21	408.26	79.41	548.16	557.09	606.26	333.87	850.11	556.66	\$ 5,065.27
HONI	9,834.24	2,974.95	4,338.12	26,889.28	15,974.52	3,107.01	21,448.53	21,797.64	23,721.93	13,063.79	33,263.27	21,780.97	\$ 198,194.25
	\$10,169.73	\$3,076.44	\$4,486.10	\$27,806.57	\$16,519.47	\$3,213.00	\$22,180.21	\$22,541.24	\$24,531.17	\$13,509.44	\$34,398.00	\$22,524.00	\$204,955.37