

October 29, 2012

Ms. Kristen Walli
Board Secretary
Ontario Energy Board
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RRFE Proceedings**Elisabeth L. DeMarco**
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Dear Ms. Walli:

**Renewed Regulatory Framework (“RRFE”)
Board File Nos.: EB-2010-0377, EB-2010-0378, EB-2010-0379, EB-2011-0004 and EB-
2011-0043**

We are counsel to the Ontario Water Power Association (“OWA”) on the RRFE Proceedings.

Eligible ProceedingsFurther to the Board's letter and report on the RRFE dated October 18, 2012 and the Board's *Practice Direction on Cost Awards*, we are writing to request cost eligibility in relation to each and all of the following (and above-mentioned) policy initiatives:

- (i) Performance Metrics
- (ii) Benchmarking and Rate Adjustments Indices
- (iii) Regional Infrastructure Planning
- (iv) Development of the Smart Grid
- (v) Integrated Approach to Network Investment Planning (Distribution Network Investment); and as applicable;
- (iv) Electricity Distribution Rate Setting

Representation and Experts

OWA will be represented by Elisabeth (Lisa) DeMarco, a senior energy lawyer at Norton Rose, whose credentials are attached as Appendix A to this letter. Together with other generator organizations (including, without limitation, CanWEA, CanSIA, APPRO and BA), OWA hopes to retain a technical expert to speak to common issues in relation to distribution network and regional infrastructure planning, smart grid, as well as applicable performance metrics. OWA may also, contingent on the terms of reference of the working groups, retain a separate waterpower and northern development specific expert to speak to the unique issues

associated with hydro-power, its critical role in northern and aboriginal development and related base load generation issues that are an integral part of distribution network and regional planning as well as the smart grid and performance metric issues that are being determined in the RRFE working groups and consultations. OWA is therefore requesting: (i) combined funding for a general generation connection/performance expert; and (ii) depending on the terms of reference for the working groups announced in the Board's October 18, 2012 letter, individual funding for a potential hydro-power and related northern development expert.

Practice Direction and Other Funding

OWA currently does not have access to any other funding to enable its participation in these RRFE proceedings that are critical for the implementation of the public interests set out in the *Green Energy Act* and its related objectives. The importance of these proceedings in the development of water power in the Province is supported by the Chair of the Board's recent comments at the OWA's annual conference.

In accordance with Section 3 of the Board's *Practice Direction on Cost Awards*, OWA believes that it is eligible for an award of costs as it represents a public interest relative to the Board's mandate (s.3.03(b)) and certain OWA members are persons with interests in land that will be affected by the outcome of the RRFE processes (s.3.03(c)). OWA is an association that represents generators and technology providers, who are often customers of distribution and/or other applicants in this RRFE and other related proceedings. As a result, OWA submits that special circumstances exist to find that it is eligible for a cost award in this RRFE process despite the fact that certain of its members may fall within s.3.05(b) of the Practice Direction. This is supported by the unique OWA mandate and the following characteristics of the organization.

While each of the OWA, APPrO and the Bio Gas Association (BA) represent members that include electricity generators, there are significant differences in the interests and memberships of these organizations.

The OWA was established in 2001 to represent the common and collective interests of the waterpower industry. Today, the OWA represents over 150 organizations. Its membership includes generators, engineering firms, environmental consultants, legal, project financing and insurance firms, aboriginal communities and other organizations, all of whom share a common interest in advancing waterpower in Ontario, and many of whom have unique interests in Northern Ontario. With respect to generation in particular, approximately one third of the OWA's members are generators, which provide approximately 99% of Ontario's waterpower generating capacity. Moreover, waterpower generation has a number of characteristics that make it unique from other types of electricity generation, including that it provides both base load and peak load generation, there is a wide geographic distribution of existing and planned facilities, unique levels of asset durability and reliability, as well as the contribution of system operation benefits such as voltage regulation, operational reserve and black start capability.

The OWA currently has reciprocal membership arrangements with APPrO and the BA, such that the OWA and each of these organizations are "associate" members of one another. Such membership status does not confer voting status. The OWA does not currently have such a relationship with OSEA.

It is the OWA's understanding that APPrO represents companies that are involved in the generation of electricity in Ontario, including generators and suppliers of services, equipment and consulting services related to electricity generation from co-generation, hydroelectric, gas, coal, nuclear, wind, waste wood and other sources. While there is some overlap between the OWA's membership and APPrO's membership, it is important to recognize that the majority of OWA members are not members of APPrO and, similarly, the majority of APPrO members are not members of OWA. Moreover, in representing the power generation sector broadly, it is our expectation that APPrO would be primarily focused on issues that are common across all or most types of electricity generation. While the OWA values its relationship with APPrO, the interests and the positions APPrO would be expected to put forward would likely be limited to areas where there is consensus among all types of generators represented by APPrO while the OWA's contributions would be restricted to matters specific to waterpower. Consequently, issues and concerns that are unique to waterpower generators may not get the level

of attention or consideration through APPrO that the OWA and its members believe those issues and concerns deserve.

It is the OWA's understanding that the BA represents the specific interests of members that are interested in the development of biogas, including agricultural biogas. Aside from the reciprocal associate memberships between the OWA and the BA, we do not believe there is any notable overlap between the membership of these two organizations. Nevertheless, as representatives of generators, there may be some common interests as between the OWA and the BA (e.g. electricity storage).

It is the OWA's understanding that OSEA represents organizations and individuals, including private citizens, cooperatives, farmers, First Nations, businesses, institutions and municipalities who share an interest in renewable energy and community power projects. Based on OSEA's intervention request, we further understand that OSEA's membership includes six electricity generators with a combined in-service capacity of approximately 20 MW, the vast majority of which is from a single wind generator. It does not appear that any of OSEA's members are waterpower generators. We also note that, based on its intervention request letter, OSEA may represent the interests of ratepayers which comprise a significant portion of its membership. This is a significantly different constituency from the industry that is served by the OWA. Nevertheless, as representatives of generators, there may be some minor common interests as between the OWA and OSEA.

Incorporation of OWA Interests into Positions of Other Organizations

As indicated above, the overlap and potential for duplication as between the OWA and OSEA, and as between the OWA and the BA is not significant. There is little or no overlap in the membership of these organizations and the interests of OSEA and BA would not necessarily be aligned with those of the OWA in respect of the policy initiatives in which the OWA has sought to intervene. It would not be appropriate or effective for the OWA to rely on its views being incorporated into the positions put forward by either BA or OSEA.

Minimizing Duplication and Overlap

The OWA is familiar with the principles applied by the Board in awarding costs. In particular, we understand the importance of being able to demonstrate, upon filing a cost claim, that the OWA has satisfied the criteria set out in Section 5.01 of the *Practice Direction on Cost Awards*. These criteria include, amongst other things, whether a party has made reasonable efforts to:

- (c) ensure its evidence is not unduly repetitive of evidence presented by other parties;
- (d) co-operate with other parties in order to reduce the duplication of evidence and questions on cross-examination; and
- (e) combine its intervention with the interventions of similarly interested parties.

Recognizing that there may be common interests and views among the OWA, and other generator and electricity storage entities and the OWA will endeavor to work with these other organizations to coordinate and collaborate where possible.

The OWA therefore submits that it should be eligible for costs. Although the OWA's membership includes electricity generators, these generators are consumers of electricity transmitters and distributors. The policies, rules, guidelines and procedures that may result from the RRFE process could have a material impact on the business conditions faced by generators, including waterpower generators, and on the transmission and distribution services provided by utilities to generators. To the extent that the RRFE process raises issues that uniquely affect the interests of the waterpower industry, it will be important for the Board to have before it the

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appropriate stakeholder representation. The OWA does not have sufficient funding to allow for it to participate effectively in the RRFE process. Accordingly, the OWA submits that it should be granted cost eligibility.

Sincerely,

Elisabeth L. DeMarco

A handwritten signature in black ink, consisting of a large, stylized initial 'E' followed by a long horizontal stroke.

Attachment

cc: Paul Norris, OWA

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Lisa represents several leading energy clients in a wide variety of natural gas and electricity matters before regulatory agencies and the Ontario Energy Board. She is also recognized as a Canadian expert, and has over 15 years of experience in the law relating to clean energy, climate change and the evolving area of environmental finance. She also

She also assists leading Canadian and international mining and energy companies on domestic and overseas power project development, renewable power projects, alternative fuel projects, corporate social responsibility, environmental disclosure and business strategy.

Lisa is one of the leading carbon transaction lawyers in the international market, having worked for investment banks and energy companies on deals and projects in India, Brazil, Sri Lanka, Thailand, Argentina, Chile, Ireland, Africa, Mexico, China and Russia. Lisa plays an ongoing and active role in the development of energy and GHG emissions policy and law throughout Canada, and in various countries around the world.

Chambers Global have ranked Lisa as a "top climate change practitioner worldwide," and an "expert in carbon transactions." Clients have indicated that she is a top person in the market and "absolutely first-rate." Lisa is also ranked by Chamber Partners as a "leading environmental lawyer in Canada." She is an appointed member of the Premier's Clean Energy Task Force that provides advice on climate change strategies and policies, as well as scientific and economic research to the Premier of Ontario.

Lisa is also involved in legal education and training, as an adjunct professor at Osgoode Hall Law School in Toronto.