



**Ontario Energy Board  
Commission de l'énergie de l'Ontario**

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**DECISION AND ORDER ON COST  
AWARDS**

**EB-2017-0182 / EB-2017-0194 / EB-2017-0364**

**HYDRO ONE NETWORKS INC.**

**UPPER CANADA TRANSMISSION INC.**

**Motion by Upper Canada Transmission Inc., Operating as NextBridge  
Infrastructure, on Hydro One Networks Inc.'s Lake Superior Link Application**

**BEFORE: Christine Long**  
Vice Chair and Presiding Member

**Allison Duff**  
Member

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**September 26, 2018**

## INTRODUCTION AND SUMMARY

This is a cost award decision of the Ontario Energy Board (OEB) on a motion filed regarding an application filed by Hydro One Networks Inc. (Hydro One).

Hydro One filed an application with the OEB on February 15, 2018 for leave to construct a 230 kV transmission line between Wawa and Thunder Bay, referred to as the Lake Superior Link.

Upper Canada Transmission Inc., operating as NextBridge Infrastructure (NextBridge), filed a motion with the OEB. Nextbridge asked that Hydro One's Lake Superior Link application be dismissed, or in the alternative, not be processed because it is not complete or compliant with OEB Filing Requirements. NextBridge had filed its own application for leave to construct a 230 kV transmission line between Wawa and Thunder Bay, referred to as the East-West Tie application.

The OEB determined that certain intervenors were eligible to apply for cost awards for their participation in the motion proceeding.

The OEB issued its Decision and Order dismissing the motion<sup>1</sup>. The OEB found that the evidence from the motion proceeding could be used to support the leave to construct applications of both parties. The OEB decided that Hydro One and NextBridge would pay each pay 50% of costs awarded to intervenors. The OEB established a process for intervenors to file their cost claims, for Hydro One and NextBridge to object to the claims, and for intervenors to respond to any objections raised by Hydro One and NextBridge. The following eligible intervenors filed costs claims<sup>2</sup>:

- |   |             |
|---|-------------|
| • Bamkushwada L.P. and Five First Nations (BLP First Nations)   | \$57,835.95 |
| • Batchewana First Nation of Ojibways (Batchewana First Nation) | \$49,499.15 |
| • Biinjitiwaabik Zaaging Anishinaabek (BZA)                     | \$23,291.86 |
| • Consumers Council of Canada (CCC)                             | \$18,235.94 |
| • Métis Nation of Ontario (MNO)                                 | \$30,479.80 |
| • School Energy Coalition (SEC)                                 | \$18,686.81 |
| • Vulnerable Energy Consumers Coalition (VECC)                  | \$14,170.20 |

NextBridge filed a response and indicated that some claims included accommodations above the maximum daily rate of \$200, meals and travel time, which are not allowed for

<sup>1</sup> EB-2017-0364 Decision and Order, July 19, 2018

<sup>2</sup> Cost claims as revised

recovery, and hearing participation claimed as consultant time rather than an honorarium.

Hydro One filed a response and indicated that the claims of BLP First Nations, Batchewana First Nation and MNO were significantly higher than the other intervenors. Hydro One noted that these intervenors engaged three or four legal counsel and that the time spent on various activities seemed disproportionately large in comparison to other intervenors.

BLP First Nations responded to the objections of NextBridge and Hydro One, arguing that it had participated responsibly and appropriately and that its level of participation was higher than the other intervenors. BLP First Nations indicated that it represented six partners and if divided by six, its costs were less than \$10,000 per partner.

## Findings

The OEB finds that certain costs claimed by BLP First Nations, BZA and Batchewana First Nation are not in accordance with the *OEB's Practice Direction on Cost Awards*<sup>3</sup> (Practice Direction) and the OEB's letter of August 25, 2017<sup>4</sup>. The OEB disallows costs for accommodations above the daily maximum of \$200, all meals, costs without receipts and travel time as these costs are not eligible claims.

BLP First Nations' claim is reduced by \$2,105.86:

- \$1,542.96 for accommodations
- \$457.65 for meals
- \$105.25 for costs without receipts

BZA's claim is reduced by \$91.90:

- \$91.90 for costs with no receipt

Batchewana First Nation's claim is reduced by \$3,156.00:

- \$166.00 for meals
- \$20.00 for costs without receipts
- \$2,970.00 for 9 hours of travel time

The OEB also disallows \$1,457.55 for Batchewana First Nation's claim of 3 hours and related disbursements for a meeting on June 11, 2018. There was no OEB meeting scheduled on that date as submissions and the oral hearing were completed on June 5, 2018.

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<sup>3</sup> OEB Practice Direction on Cost Awards, revised April 24, 2014

<sup>4</sup> OEB letter, New Guidance on Practice Direction on Cost Awards, August 25, 2017

The OEB approves a \$500 honourarium for Chief Dean Sayers' participation in the motion proceeding. This honourarium is in accordance with the section 3.08 of the Practice Direction and consistent with the honorariums awarded to BLP First Nations. The OEB disallows the hourly consultant compensation in Batchawana First Nation's claim, resulting in a reduction of \$2,980 for 12 hours.

### Hours Claimed

The OEB reviewed the hours claimed in fees by all intervenors. For intervenors with multiple legal counsel, the OEB expects work to be distributed effectively based on years of experience. Generally, the OEB also does not compensate for time spent conferencing among lawyers or for costs incurred after the OEB's decision is issued.

<u>Intervenor</u>	<u>Hours Claimed</u>
BLP First Nations	177.30
Batchewana First Nation	135.66
BZA	89.40
CCC	54.20
MNO	146.00
SEC	71.90
VECC	38.00

The OEB expects that intervenors who filed evidence would claim more hours.

The OEB finds that the 177.30 hours claimed by BLP First Nations, 135.66 hours claimed by Batchewana First Nation and 146.00 hours claimed by MNO to be significantly higher than other intervenors who actively participated in the motion proceeding. In comparison, BZA claimed 89.40 hours for filing interrogatories, evidence, preparing for and attending the technical conference and the oral hearing. The OEB finds the number of hours claimed by BZA to be reasonable. The OEB also finds that intervenors who filed evidence provided similar assistance to the OEB in understanding the issues relevant to the motion.

The OEB approves a maximum of 100 hours for this preliminary motion with a limited scope and defined set of issues. Hours claimed beyond 100 are outside the range the OEB finds reasonable. Based on the average hourly rate claimed by intervenor, the OEB reduces BLP First Nations' cost claim by \$17,779.00 (77.3 hours at \$230 per hour) plus HST of \$2,311.27. The OEB reduces<sup>5</sup> Batchewana First Nation's cost claim by

<sup>5</sup> In addition to the disallowance of 24 hours (9+3+12) in this Decision

\$3,240.90 (11.7 hours at \$277 per hour)<sup>6</sup>. The OEB reduces MNO's cost claim by \$8,602.00 (46 hours at \$187 per hour) plus HST of \$1,118.26.

### Costs Awarded

The OEB finds that the cost claims submitted by CCC, SEC and VECC are reasonable, in accordance with the Practice Direction and do not require adjustment. The approved cost claims are as follows:

• Bamkushwada L.P. and Five First Nations	\$34,888.67
• Batchewana First Nation of Ojibways	\$33,458.90
• Biinjitiwaabik Zaaging Anishinaabek	\$23,199.96
• Consumers Council of Canada	\$18,235.94
• Métis Nation of Ontario	\$20,759.54
• School Energy Coalition	\$18,686.81
• Vulnerable Energy Consumers Coalition	\$13,034.08

Hydro One and NextBridge shall pay 50% each of the approved intervenors' cost claims as set out in the Order section of this Decision.

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Hydro One Networks Inc. shall immediately pay the following amounts to the intervenors for their costs:

• Bamkushwada L.P. and Five First Nations	\$17,444.34
• Batchewana First Nation of Ojibways	\$16,729.45
• Biinjitiwaabik Zaaging Anishinaabek	\$11,599.98
• Consumers Council of Canada	\$9,117.97
• Métis Nation of Ontario	\$10,379.77
• School Energy Coalition	\$9,343.41
• Vulnerable Energy Consumers Coalition	\$6,517.04

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<sup>6</sup> HST not applicable

2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, NextBridge Infrastructure shall immediately pay the following amounts to the intervenors for their costs:

• Bamkushwada L.P. and Five First Nations	\$17,444.34
• Batchewana First Nation of Ojibways	\$16,729.45
• Biinjitiwaabik Zaaging Anishinaabek	\$11,599.98
• Consumers Council of Canada	\$9,117.97
• Métis Nation of Ontario	\$10,379.77
• School Energy Coalition	\$9,343.41
• Vulnerable Energy Consumers Coalition	\$6,517.04

3. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Hydro One and NextBridge shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

**DATED** at Toronto September 26, 2018

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary