



EB-2007-0050

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

AND IN THE MATTER OF an Application by Hydro One
Networks Inc. pursuant to section 92 of the Act, for an
Order or Orders granting leave to construct a transmission
reinforcement project between the Bruce Power Facility
and Milton Switching Station, all in the Province of Ontario.

AND IN THE MATTER OF an award of costs pursuant to
section 30 of the OEB Act.

BEFORE: Pamela Nowina
Vice Chair and Presiding Member

Cynthia Chaplin
Member

Ken Quesnelle
Member

**AMENDED
DECISION AND COST ORDER
November 5, 2008**

INTRODUCTION

Proceeding

Hydro One Networks Inc. (“Hydro One”) filed an amended application with the Ontario Energy Board (the “Board”) dated November 30, 2007 under section 92 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B. This Amended Leave to Construct Application addressed certain changes to Hydro One’s original application filed with the Board on March 29, 2007.

Hydro One sought an Order of the Board to construct approximately 180 kilometres of double-circuit 500 Kilovolt (“kV”) electricity transmission line adjacent to the existing transmission corridor (500 kV and/or 230 kV) extending from the Bruce Power Facility in Kincardine Township to Hydro One’s Milton Switching Station in the town of Milton. Hydro One also proposed to make modifications at the Milton, Bruce A and Bruce B transmission stations to accommodate the new transmission lines. This Leave to Construct Application was given Board file No. EB-2007-0050.

The Board issued its Decision and Order on September 15, 2008, approving the application with certain conditions. In that decision the Board indicated that the decision and order on cost would be issued shortly.

Cost Award Process and Timeline

On May 23, 2008 the Board issued, by way of a letter, a direction to all intervenors and the Applicant on intervenor cost submissions (“Direction on Cost Submissions”).

In its Direction on Cost Submissions the Board referred to its Decision and Order on the Motion, dated July 4, 2007, in which the Board, among other matters, indicated it would institute a staged cost award process. Accordingly, the Board set the schedule for a staged cost award process and noted that the intervenors may chose to wait until the proceeding is completed and file a single claim for all of their costs. The Board stated that the staged cost award process would consist of two stages. In Stage One, intervenors could file claims for eligible costs incurred from the start of the proceeding until May 16, 2008. In an interim decision on May 30, 2008, the Board approved the claim made by Fallis Group of landowners (“Fallis Group”) for consulting services for a period up to May 15, 2008 (“Interim Cost Order”).

The Board, in the Procedural Order No. 11, dated June 17, 2008, made provision for Stage Two cost claims and claims for those intervenors that have chosen to file a single cost claim.

On August 1, 2008 the Board issued its Decision and Cost Order-Stage One ("Stage One Cost Decision") approving 100% of costs claimed by Fallis Group, Mr. Chris Pappas, Energy Probe, and Métis Nations of Ontario.

The total costs claim by all of the eligible intervenors for the entire proceeding is about \$1,420,000¹.

CLAIMS AND SUBMISSIONS

Cost Claims Filed

The following intervenors filed cost claims subject to this decision:

- Mr. Chris Pappas, an individual intervenor claimed \$342.61 for Stage Two disbursements;
- Mr. Robert Barlow, an individual intervenor claimed \$66,511.08 for Stages One and Two, consulting fee and disbursements;
- Pollution Probe claimed \$262,842.33 for Stages One and Two;
- Energy Probe Research Foundation ("Energy Probe") claimed \$6,046.67 for Stage Two;
- Fallis Group of landowners claimed \$65,357.51 for Stage Two;
- Powerline Connections group of landowners claimed \$68,977.16 for Stage One²;
- The Ross Firm Group of landowners claimed \$113,885.94 for Stages One and Two;
- Métis Nations of Ontario ("MNO") claimed \$20,754.83 for Stage Two;
- Saugeen Ojibway Nations ("SON") claimed \$594,238.96 for Stages One and Two.

¹ This total is made up of the total claims that are subject to this review in the amount of \$1,198,966.24; \$5,473.00 awarded to Fallis Group in the Interim Cost Order; and \$215,539.00 awarded to the Energy Probe, Mr. Pappas, Fallis Group and the Métis Nations of Ontario in the Stage One Cost Decision.

² This intervenor withdrew from the proceeding on April 8, 2008.

Submissions

Hydro One replied to the cost claims by filing two letters. In a letter dated August 5, 2008 Hydro One raised no issues on the claims by the Fallis Group, MNO, SON and Energy Probe and stated that it relied on the Board's review of the accuracy of claims and adherence to *Practice Direction on Cost Awards*. In a second letter, dated August 8, 2008, Hydro One commented that it had no concerns with claims of the Ross Firm Group, Mr. Pappas, Pollution Probe and Powerline Connections. Regarding Mr. Pappas, Hydro One stated that it would support an honorarium be awarded to Mr. Pappas to "recognize his interest in and contribution to the proceedings" should the Board consider such an approach.

Hydro One's letter of August 8, 2008 did raise objections to the claim of Mr. Barlow. Hydro One pointed that the Board's "longstanding practice in cost award and the Board's Rules of Practice and Procedure/Practice Direction on Cost Awards have clearly indicated that an individual's or an organization's staff cannot normally seek reimbursements for themselves or their own staff and officers." Hydro One also noted that the Board in its intervenor acknowledgement letter stated to Mr. Barlow that "you will likely not be eligible to receive any costs associated with your time (e.g. the time you spend attending the hearing or the time you spend preparing submissions etc.)." Finally, Hydro One asked that the Board not award cost for disbursements to Mr. Barlow or any other party if no receipts were provided in support of those claims.

In the letter of August 8, 2008, Hydro One also requested that the Board review all the claims for "properly supported, allowable and reasonable disbursements." In particular, Hydro One noted that this applied especially to The Ross Firm Groups' meals and accommodation expenses.

On August 11, 2008, Mr. Ross, on behalf of The Ross Firm Group, replied to Hydro One's comments. Mr. Ross explained the accommodation and meal expenses that were claimed as part of disbursements.

The preliminary review of the cost claims by the Board determined that Mr. Barlow, Powerline Connections, The Ross Firm Group and SON filed incomplete cost claims. On August 8, 2008, Board Staff sent an e-mail to Mr. Barlow asking him to provide additional information but to date he has not done so. On August 25, 2008 the Board, by a way of letter, gave an opportunity to Powerline Connections, The Ross Firm Group

and SON to submit the additional documentation by August 29, 2008. The Ross Firm Group and SON responded by August 29, 2008, while Powerline Connections filed additional information on September 5, 2008.

BOARD FINDINGS

The Board's review includes a determination if the legal and consulting fees and disbursements claims are appropriately supported by documentation and receipts and are in full accordance with *Board's Practice Directions on Cost Awards*. The Board's Findings will address the overall assessment and comparison of hours claimed by the intervenors in the entire proceeding and will also provide the reasons for cost awards for fees and disbursements for Stage Two and single cost claims.

Overall Assessment- Comparison of Hours Claimed

In the Stage One Cost Decision the Board indicated that:

The costs being awarded in this decision are being done so on a final basis. However, the Board will consider the Stage One costs when it is conducting its overall assessment of the intervenor cost claims as part of its Stage Two decision process. If the Board determines that any adjustments are required, those adjustments will be made to the Stage Two cost claims.

Accordingly, the Board compared all of the costs claimed for the entire proceeding, with purpose to determine if any of the intervenors filed unreasonably high hours spent in preparation or hearing attendance. Review of the hours claimed for participation in the entire proceeding indicates the following hours claimed:

Groups of landowners represented by legal counsel:

- The Fallis Group landowners claimed a total of 582.75 hours for the proceeding. This consists of 30.5 hours claimed up to May 15, 2008³ and 357.05 hours in Stage One and 195.20 hours in Stage Two.

³ Interim Cost Decision awarded 21.75 hours out of 30.5 hours claimed for the period up to May 15, 2008 for consulting costs.

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- Powerline Connections landowners claimed a total of 463.30 hours for the proceeding.
- The Ross Firm Group landowners claimed a total of 574.05 hours for the proceeding.

Other groups:

- Energy Probe claimed a total of 347.20 hours for the proceeding. This total consists of 305.20 hours for Stage One and 27.25 hours for Stage Two.
- Pollution Probe claimed a total of 1,441.10 hours for the proceeding.

Aboriginal Peoples:

- Métis Nations of Ontario claimed a total of 177.80 hours for the proceeding. This total consists of 95.10 hours in Stage One and 82.70 hours in Stage Two.
- The SON claimed a total of 2,269.55 hours for the proceeding. This total consists of 1,632.70 hours for Stage One and 636.85 hours for the Stage Two.

Individual intervenors:

- Mr. Barlow claimed a total of 553 consulting hours for the proceeding;
- Mr. Pappas, claimed disbursements only and no consulting hours for his participation in the proceeding.

The Board will not award any claimed costs to Mr. Barlow for hours and corresponding fees. Individuals representing their own private interests typically do not qualify for award of costs spent in preparation, attendance of hearing or participating in the hearing. Mr. Barlow was represented by counsel through the Powerline Connections (of which he is a member), but he chose to represent himself at the hearing. While this is certainly acceptable, the Board does not award compensation to individual intervenors for the time they spend on the proceeding.

Pollution Probe and SON claimed the highest number of hours. Pollution Probe and SON will be awarded 100% of appropriately claimed costs for legal and consulting fees. The Board notes that their evidence and submissions were particularly helpful to the Board.

The Board finds that Energy Probe, Pollution Probe, MNO, SON, The Ross Firm Group and Powerline Connections are entitled to 100 % of their costs for hours claimed, where the claim is appropriately supported by time dockets.

The Fallis Group claimed 84.10 hours for argument preparation. The Board finds this excessive relative to the value of the argument to the proceeding. The argument was of limited assistance to the Board's determination of the application: the issue of whether the project was "discretionary" was largely irrelevant; the relevance of the Board's objectives in determining the application was largely self-evident; and the interpretation of the Board's finding on the scope of the hearing and the review of alternatives was incorrect. The Board will reduce the number of hours awarded to the Fallis Group claimed for the argument to 20 hours.

Findings: Stage Two and Single Claims

The Board will award Mr. Pappas an honorarium of \$2,000. Mr. Pappas worked diligently in proceeding to present evidence and test applicant evidence. He raised issues which were then explored further by expert witnesses of other intervenors. Mr. Pappas is also awarded his disbursements which were appropriately filed in accordance with the *Practice Direction on Cost Awards*.

Mr. Barlow claimed a total of \$2,743.88 for disbursements. Most of the disbursements claims are not supported by the receipts. Only \$90.16 disbursement receipts were submitted. The Board's normal practice is not to require receipts for costs such as photocopying, binding, and postage as long as the claimed costs are reasonable. The Board will award to Mr. Barlow \$164.16. This amount includes disbursements supported by appropriate receipts and administrative costs for copies, fax and postage in the amount of \$74.00 as claimed without receipts. The Board notes that Mr. Barlow was reminded on several occasions to file receipts for the other disbursements and that he acknowledged these reminders. However, no further receipts were submitted.

The claims by the Fallis Group, Energy Probe and MNO follow the *Practice Direction on Cost Awards* regarding the fees, supporting time dockets, forms, documentation and receipts. These costs will be awarded as claimed, subject to the adjustment to the Fallis Group claim as determined above.

Pollution Probe's claim includes work done by summer students for the total amount of \$1,617.81. Similarly, Powerline Connections' cost claim includes work done by Law Clerks, Law Librarian and Students at Law. The total amount claimed by Powerline Connections for this work is \$23,064.30. Although the Board's tariff does not explicitly provide for payments for such categories, the Board will allow award of these costs to Pollution Probe and Powerline Connections. The Board encourages intervenors to use lower cost resources, such as summer students or Law Clerks, where practical. Pollution Probe's costs will be awarded as claimed.

The disbursements claimed by Powerline Connections were not supported by any required receipts. On September 5, 2008, Powerline Connections, in response to Board's letter dated August 25, 2008, filed the missing receipts for disbursements claimed at \$1,373.73. These disbursements will be allowed subject to a minor adjustment.⁴

The Ross Firm Group's claim for disbursements was not completely supported by receipts. The Ross Firm Group explained, in response to the Board's letter dated August 25, 2008, that the receipts originally filed are all that are available and that additional receipts would not be filed. The Board will accept the receipts provided, although they are not itemized. The Ross Firm Group claimed a total of \$10,672.01 for disbursements. The review of the claims indicated that certain costs claimed are not in accordance with the Board *Practice Direction on Cost Awards* and therefore the Board will accordingly reduce the amount to be awarded for disbursements to \$9,779.82.

SON filed an incomplete claim for Stage One on June 2, 2008 and, upon the Board's request, filed a completed Stage One claim on July 17, 2008. On July 8, 2008 the SON filed Stage Two cost claims. The total amount claimed by the SON for Stage One is \$415,645.64; for Stage Two \$178,593.32. This makes a total claim by the SON for the entire proceeding \$594,238.96. The Board will award all of the legal and consulting fees appropriately claimed by the SON in this proceeding. Not all hours claimed for consulting fees were supported by the time dockets as required by *Board's Practice Directions on Cost Awards*, and therefore these costs will not be awarded. The total amount of legal and consulting fees that is appropriately supported by time dockets is \$519,117.00 and this amount is allowed to be awarded.

⁴ The Board reduced the claimed disbursement by a minor adjustment to reflect the Board's practice on meals.

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SON claimed total disbursements for the proceeding in the amount of \$29,236.37. Review of the documentation indicates that certain costs are not supported by appropriate receipts. The Board will allow an award of \$25,605.62 to SON for disbursements.

On October 9, 2008, SON filed appropriate claim for additional 64.4 hours of consulting work in the amount of \$14,710.50. The Board is amending the decision and cost order to award additional \$14,710.50. This brings the total awarded cost to SON to \$559,433.12. This is the only amendment to this decision.

THE BOARD THEREFORE ORDERS THAT, pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Hydro One Networks Inc.:

Shall immediately pay:

Mr. Robert Barlow	\$164.16
Energy Probe	\$6,046.67
Fallis Group	\$43,146.86
Métis Nations of Ontario	\$20,754.83
Pollution Probe	\$262,842.33
Powerline Connections	\$68,971.71
The Ross Firm Group	\$112,993.26
The SON	\$559,433.12

Shall, on October 2, 2008, pay:

Mr. Chris Pappas	\$2, 342.61
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Shall pay the Board's costs of and incidental to this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, November 5, 2008.
ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary