



**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

## **PARTIAL DECISION AND COST ORDER**

### **Interim Costs Submissions by the “Fallis Group”**

## **PROCEEDING TO DATE**

Hydro One Networks Inc. (“Hydro One”) filed an amended application (the “Amended Leave to Construct 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 (the “Act”). This Amended Leave to Construct Application addresses certain changes to Hydro One’s original application filed with the Board on March 29, 2007.

**BOARD'S DIRECTION ON COST SUBMISSIONS**

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 Motion, dated July 4, 2007, in which the Board, among other matters, indicated it would institute a Staged Cost Award process. That Decision stated:

*"The Board does understand that cost awards can be a lengthy process and that this places a significant burden on participants in a lengthy proceeding. Therefore, for this proceeding, the Board will institute a staged cost awards 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 will consist of two stages. In the First Stage intervenors may file claims for eligible costs incurred based on their participation from the start of the proceeding until May 16, 2008, inclusive. In the Second Stage, the intervenors that chose to file costs in a staged manner, will have the opportunity to claim the costs incurred for their participation in the remainder of the proceeding. In the Direction on Cost Submissions the Board set the following timeline for filing cost claims in the First Stage: eligible intervenors shall file their cost submissions in by June 2, 2008; Hydro One Networks may reply to these cost claims June 16, 2008; and the intervenors may reply by June 23, 2008.

**INTERIM COST SUBMISSION BY FALLIS GROUP**

On May 26, 2008, Mr. Peter T. Fallis of Fallis Fallis & McMillan representing a number of directly affected landowners-intervenors in the EB-2008-0050 proceeding asked for:

*"the immediate Order of this Board to direct HONI to immediately pay the reimbursement of \$ 7,311.22 to Fallis Fallis & McMillan in trust, by Friday May 30<sup>th</sup>, 2008 to enable these Intervenors to secure the re-attendance from Florida of Edward Brill to testify in these proceedings."*

According to Mr. Fallis' submissions, Mr. Brill prepared a report related to the evidence by Hydro One and flew to Toronto and was prepared to testify and support this report. Mr. Brill anticipated that he would appear as a witness between May 13<sup>th</sup> and May 15<sup>th</sup>. However, because of the change in the procedural schedule due to the filing of new Hydro One evidence Mr. Brill did not testify before the Board on May 15<sup>th</sup>.

Mr. Fallis submitted that an immediate award of this interim cost claim was necessary so that the Fallis Group could fund Mr. Brill's return to Toronto to testify.

It appears that Mr. Fallis is seeking recovery for only a portion of his costs incurred prior to May 16, 2008. Presumably, further claims for this period will come at a later date, and the Board has therefore labelled this a partial decision and cost award.

The Board notes that Mr. Fallis' request does not meet the instructions in the Board's May 23, 2008 letter. However, given the exceptional circumstances and the urgency of the request, the Board is prepared in this case to part from its normal practices and allow for the recovery of a partial cost award on an expedited basis.

Mr. Fallis' original cost claim included a Summary of Disbursements (Form 2) and a submission in support of the requested cost award. An invoice from Mr. Brill was attached. The Board notes the cost claim and the information provided by Mr. Fallis was not initially filed in strict accordance with Board's *Practice Direction on Cost Awards*, as it did not include Form 1 or a supporting affidavit, both of which are required.

On May 27, 2008, Mr. Fallis filed Form 1 to the cost claim and an affidavit supporting the claim. The affidavit sought to clarify certain elements of the originally filed claim. Specifically, the initial cost claim requested \$7311.22, of which \$6405 was for Mr. Brill's services and \$906.22 was for Mr. Brill's travel disbursements. Mr. Brill billed his time at a rate of \$210 per hour (\$6405 for 30.5 hours). Mr. Brill's invoice, which was attached in support of the cost claim, revealed that 17.75 of the hours he billed were categorized as "travel time". This accounts for \$3727.50 of Mr. Brill's total bill. Section 6.11 of the Board's Practice Direction on Cost Awards is clear that travel time is not recoverable. In his affidavit dated May 27, Mr. Fallis clarified that in fact 9 of the hours marked as travel time had also been spent on case preparation. The Board accepts this clarification. However, that still leaves 8.75 hours billed for travel time which must be deducted from the claim.

In his submissions, Mr. Fallis notes that Mr. Brill is in fact billing at a significantly lower rate than he could be entitled to under the Board's tariff, where an expert with his experience can recover up to a maximum of \$330 per hour. The Board appreciates efforts to obtain expert assistance at a rate below the permitted maximum; however the Board cannot permit recovery for travel time, or at any rate other than the rate actually charged. The Board will therefore allow for the recovery of 21.75 hours of Mr. Brill's time (\$4567.50), plus his disbursements (\$906.22). The total recovery from this partial cost award, therefore, is \$5473.72.

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

- A landowner group represented by Peter Fallis of Fallis, Fallis & McMillan the sum of **\$5473.22.**

**DATED** at Toronto, May 30, 2008

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary