



EB-2009-0077

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

AND IN THE MATTER OF cost award eligibility for interested parties in a consultation process regarding proposed amendments to the Distribution System Code associated with connection cost responsibility of renewable distributed generation.

BEFORE: Paul Sommerville
Presiding Member

DECISION ON COST ELIGIBILITY

On June 5, 2009 the Ontario Energy Board (the “Board”) issued a Notice of Proposed Amendments to the Distribution System Code (the “June 5 Notice”) to revise its current approach to assigning cost responsibility. The June 5 Notice also notified interested parties that cost awards would be available to eligible persons under section 30 of the *Ontario Energy Board Act, 1998* in relation to their participation in this process, and that any costs awarded would be recovered from all licensed electricity distributors.

The Board received requests for cost eligibility from the following participants:

- Association of Major Power Consumers in Ontario (“AMPCO”);
- Association of Power Producers in Ontario (“APPrO”);

- Canadian Wind Energy Association (“CanWEA”);
- Consumers Council of Canada (“CCC”);
- Council of Canadians (“CoC”);
- London Property Management Association (“LPMA”);
- National Chief’s Office (“NCO”);
- Northwatch;
- Ontario Waterpower Association (“OWA”);
- Pollution Probe;
- School Energy Coalition (“SEC”); and
- Vulnerable Energy Consumers Coalition (“VECC”);

Electricity distributors were given an opportunity to file any objections they might have in relation to the eligibility of the above-noted participants for an award of costs. The Board did not receive any objections from distributors.

The Board’s Practice Direction on Cost Awards (the "Practice Direction") sets out the following policy regarding cost eligibility:

3.03 A party in a Board process is eligible to apply for a cost award where the party:

- (a) primarily represents the direct interests of consumers (e.g. ratepayers) in relation to regulated services;
- (b) primarily represents a public interest relevant to the Board’s mandate;
- or
- (c) is a person with an interest in land that is affected by the process.

3.05 Parties not eligible for a cost award include:

- (a) applicants before the Board;
- (b) transmitters, wholesalers, generators, distributors, and retailers of electricity, either individually or in a group;
- (c) transmitters, distributors, and marketers of natural gas, and gas storage companies, either individually or in a group;
- (d) the IESO; and
- (e) the Ontario Power Authority.

In addition, the Practice Direction articulates the discretion the Board exercises in the application of the policy:

- 3.04 In making a determination whether a party is eligible or ineligible, the Board may also consider any other factor the Board considers to be relevant to the public interest.
- 3.06 Notwithstanding section 3.05, the Board may, in special circumstances, find that a party which falls into one of the categories listed in section 3.05 is eligible for a cost award in a particular process.

Based on the criteria set out in section 3 of the Board's Practice Direction, the Board has determined that the following participants are eligible for awards of costs in this process: AMPCO; CCC; CoC; LPMA; NCO; Northwatch; Pollution Probe; SEC; and VECC.

The following parties would not usually be eligible for an award of costs, due to their inclusion in the list of ineligible parties (i.e., generators) in section 3.05 of the Practice Direction: APPrO; CanWEA; and OWA.

However, the Board has found that special circumstances exist in this process that would allow these parties to be eligible. This process is in relation to the assigning cost responsibility as between a distributor and a generator in relation to the connection of renewable generation facilities to distribution systems. Given the impact that this process may have on prospective generators and given the unique perspective that these generators will bring to this process, the Board will allow these parties to be eligible for cost awards in this process. The Board also notes that these participants have established constituencies that represent significant expertise in the matters relevant to this process, and are therefore expected to assist the Board in developing a better understanding of the issues of broad interest that are being considered. Therefore, for the purposes of this process, APPrO; CanWEA; and OWA will be eligible for cost awards.

The Board expects that participants in this process will make every effort to communicate and co-ordinate their participation in this process to the extent that they represent the same interests or class of persons.

ISSUED at Toronto, June 29, 2009.

ONTARIO ENERGY BOARD

Original signed by

Paul Sommerville
Presiding Member