



**EB-2009-0078**

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

**AND IN THE MATTER OF** an application by Hydro One  
Networks Inc. for an Order granting leave to construct  
transmission facilities for the Lower Mattagami Reinforcement  
Project.

**BEFORE:** Pamela Nowina  
Presiding Member and Vice-Chair

Cynthia Chaplin  
Member

Paul Sommerville  
Member

## **DECISION AND ORDER ON COST AWARDS**

### **Background**

Hydro One Networks Inc. ("Hydro One") filed an application with the Ontario Energy Board (the "Board") dated April 8, 2009, under section 92 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B. The Applicant applied for an order of the Board for leave to construct transmission facilities for the Lower Mattagami Transmission Reinforcement Project. The work involves modifying the support towers and adding a second 230 kilovolt three phase transmission circuit to the existing 4.56 km section of line H22D from Harmon Junction to Kipling Generating Station. The Board assigned the application File Number EB-2009-0078.

The Independent Electricity Operator was granted intervenor status but is not eligible and did not request costs. The Métis Nation of Ontario (“MNO”) was granted intervenor status and was found to be eligible to apply for an award of costs.

The Board issued its Decision and Order on the application on August 5, 2009, in which it set out the process for intervenors to file their cost claims and to respond to any objections raised by Hydro One.

On August 21, 2009, the Board received objections from Hydro One to the cost claim from MNO. Hydro One raised concerns that G.S.T. appears to have been applied on the MNO claim at the 5% “for-profit” rate and not the 2.5% “non-profit” rate.

MNO filed a reply on August 24, 2009 and stated that while the MNO is a non-profit corporation for which the 2.5% G.S.T. rate applies, this 2.5% G.S.T. rate is only realized through the MNO’s G.S.T. filings with Revenue Canada and a rebate on the MNO’s G.S.T. claims. MNO stated that all of its vendors must charge and collect 5% G.S.T. on all goods and services and that the MNO must initially pay 5% G.S.T. on all goods and services it purchases or procures. This is standard for all not-for-profit corporations that do not have charitable foundation status.

MNO noted that in previous cost claims to the Board (i.e., EB-2007-0707, EB-2007-0050), the MNO has identified itself as a “non-profit corporation” which benefits from 2.5% (50% of the full 5%) G.S.T. status, but its claims were paid for the full G.S.T. amount that was billed to the MNO by its legal counsel.

## **Board Findings**

The Board has reviewed the cost claim filed by MNO.

MNO claimed total disbursements for the proceeding in the amount of \$1,207.18 (excluding G.S.T.). Review of the documentation indicated that one cost claim is not supported by appropriate receipt. The Board will allow an award of \$1,188.13 for disbursements.

The Board notes Hydro One’s concerns with respect to the GST rate. The *Board’s Practice Direction on Cost Awards* stipulates a 2.5% G.S.T. rate for non-profit organization. The Board notes MNO’s comment that in earlier decisions 5% G.S.T. was granted, however, the Board accepts Hydro One’s observation that 2.5% G.S.T. is the appropriate rate.

The Board is also concerned that the cost claim by MNO is excessive in relation to the nature and scope of the proceeding. The Board notes that MNO reached a settlement with the applicant prior to the end of the proceeding and was not required to complete interrogatory responses or prepare final submissions. The Board also notes that since there was no oral hearing, the effort required, when compared with other recent leave to construct projects (such as the Bruce-Milton project, EB-2007-0050, in which the MNO was also a cost eligible intervenor) is smaller. MNO's cost claim in this proceeding is unreasonable given the claims of intervenors in more complex cases, including the MNO's own claim of \$20,754.83 in the Bruce-Milton proceeding. The Board will reduce the MNO cost claim in total by 50% to reflect a reasonable level of engagement in a proceeding of the breadth and scope of the Lower Mattagami proceeding. The adjusted cost claim will be paid by Hydro One.

**THE BOARD THEREFORE ORDERS THAT:**

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Hydro One shall immediately pay MNO \$10,133.22
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Hydro One shall pay the Board's costs of and incidental to this proceeding immediately upon receipt of the Board's invoice.

**DATED** at Toronto, September 28, 2009  
**ONTARIO ENERGY BOARD**

Original signed by

Kirsten Walli  
Board Secretary