



EB-2010-0377
EB-2010-0378
EB-2010-0379

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 stakeholders in relation to consultation
processes on the development of a Renewed Regulatory
Framework for Electricity.

BEFORE: Cynthia Chaplin
Chair and Presiding Member

DECISION ON COST ELIGIBILITY

In a [consultation cover letter](#) (the “cover letter”) dated December 17, 2010, the Board notified stakeholders 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 a coordinated consultation to develop three related elements of a Renewed Regulatory Framework for Electricity. The objectives of three consultations are as follows:

- *Distribution network investment planning:* To ensure that distributor investment plans are demonstrably economically efficient and cost-effective, and paced so as to match required expenditures with fair and reasonable rate adjustments and predictable changes to the elements of customer bills affected by the plans (EB-2010-0377);
- *Rate mitigation:* To provide utilities and the Board with a set of tools, approaches or options to help mitigate the effects of unavoidable and significant rate/bill impacts (EB-2010-0378); and

- *Defining and measuring electricity utility performance:* To create conditions which will foster the cost-effective and efficient implementation of Board-approved network investment plans by transmitters and distributors through the establishment of appropriate standards for performance and efficiency, the provision of appropriate incentives, and the review of utility performance (EB-2010-0379).

The cover letter also indicated that any costs awarded would be recovered from rate-regulated licensed electricity distributors (EB-2010-0377) or from both rate-regulated licensed electricity distributors (50%) and rate-regulated electricity transmitters (50%) (EB-2010-0378 and EB-2010-0379).

The Board received requests for cost award eligibility from the following stakeholders:

1. [Association of Major Power Consumers in Ontario](#) (AMPCO)
2. [Association of Power Producers of Ontario](#) (APPrO)
3. [Canadian Energy Efficiency Alliance](#) (CEEA)
4. [Canadian Manufacturers & Exporters](#) (CME)
5. [Consumers Council of Canada](#) (CCC)
6. [Council of Canadians](#) (CoC)
7. [Electrical Contractors Association of Ontario](#) (ECAO)
8. [Energy Probe Research Foundation](#) (EPRF)
9. [Federation of Rental-housing Providers of Ontario](#) (FRPO)
10. [London Property Management Association](#) (LPMA)
11. [Low-Income Energy Network](#) (LIEN)
12. [National Chief's Office](#) (NCO)
13. [Ontario Sustainable Energy Association](#) (OSEA)
14. [School Energy Coalition](#) (SEC)
15. [Vulnerable Energy Consumers Coalition](#) (VECC)

With the exception of APPrO, all of the cost eligibility requests pertained to all three of the consultations.

The cost eligibility requests submitted by AMPCO, CEEA, EPRF, FRPO, LIEN, NCO and OSEA were received after the filing deadline set out in the cover letter. The Board will accept these requests notwithstanding the late filings.

Electricity transmitters and distributors were given an opportunity to file objections to the cost eligibility requests. The Coalition of Large Distributors ("CLD") objected to the

request filed by ECAO. Mr. Parker Gallant filed three letters objecting to the requests of APPrO, CoC, ECAO, SEC, CEEA, and OSEA. The participants whose requests were the subject of an objection were afforded an opportunity to reply, and each such participant did so. Mr. Gallant subsequently filed a letter of clarification in relation to his objection to CoC's request.

Based on the criteria set out in section 3.03 of the Board's *Practice Direction on Cost Awards* (the "*Practice Direction*"), the Board finds that AMPCO, CME, CCC, FPRO, LPMA, LIEN, SEC, VECC, CoC, EPRF and NCO are eligible for an award of costs.

APPrO requested eligibility in relation to two of the three initiatives (EB-2010-0377 and EB-2010-0379), referring specifically to the scope and potential implications of those processes for its members, and noting that its members are customers of transmission and distribution utilities in Ontario, many of which have current connection applications in development or underway. Generators, either as a group or individually, are usually ineligible for a cost award under section 3.05 of the *Practice Direction*. However, the Board is satisfied that special circumstances exist in this consultation that would allow APPrO to be eligible. Specifically, generators are customers of electricity utilities and, in that sense, they can be likened to consumers in the circumstances of the two consultations at issue. The Board therefore finds that APPrO is eligible for an award of costs in relation to the two consultations for which it requested eligibility.

ECAO is a not-for-profit corporation established to represent electrical contractors in Ontario. The Board does not generally grant cost eligibility to organizations whose members represent purely commercial interests separate from ratepayer interests. Mr. Gallant and the CLD objected to ECAO's request. The CLD objected "on the basis that the ECAO is primarily a private interest trade association which does not directly represent either consumer interests or the public interest".

ECAO has indicated that its "central objectives include increasing electricity customer efficiency, choice and access to electricity service through competitive services." The Board has determined that ECAO is eligible for an award of costs for two of the consultations (EB-2010-0377 and EB-2010-0379) but not the third. In the context of these two consultations, the Board finds that ECAO represents a public interest that is relevant to the Board's mandate because access to competitive services, as an alternative to utility-provided services, is an important component of ensuring efficient outcomes for ratepayers.

OSEA has requested cost eligibility on the grounds that it represents the public interest through its focus on environmental and sustainable energy issues. Its membership includes individuals, non-profit and community-based organizations and generators. OSEA takes the position that its mandate is unique:

The organization promotes sustainable energy and community power, where every Ontarian is a conserver and generator of sustainable energy, either through a household or through a local community owned business. OSEA promotes community-based (or ratepayer-based) ownership of renewable energy.

The Board finds that OSEA represents a public interest relevant to the Board's mandate in the three consultations at issue, and therefore finds OSEA eligible for an award of costs.

CEEA's request for cost eligibility noted that CEEA's mission is to be "the leading independent voice in Canada to promote and advance energy efficiency and its related benefits to the economy and the environment". The Board notes that CEEA's membership "consists mainly of investor owned companies, utilities owned by local or provincial governments, and Associations focused on energy efficiency". Among CEEA's members are Enbridge, Union Gas, Ontario Power Generation, Hydro One and other entities regulated by the Board, which either as a group or individually are usually ineligible for a cost award under section 3.05 of the *Practice Direction*. The other members of CEEA are commercial entities which, as noted above, are also not usually eligible for an award of costs. Most of the members identified by CEEA already pursue energy efficiency programs through regulated rates. The Board therefore finds that CEEA's focus on and dedication to energy efficiency does not, in the context of these consultations, represent special circumstances which would render the CEEA eligible for an award of costs. The Board therefore finds that CEEA is not eligible for an award of costs in these consultations.

Mr. Gallant objected to a number of the eligibility requests, primarily on the grounds that the requesting participants have access to adequate funds without resorting to further funding from ratepayers. The Board addressed these types of objections at some length in its Decision on Motion to Review in consultation process EB-2010-0059 (transmission project development planning) respecting the cost eligibility of OSEA:

Cost awards are an important component of the Board's procedures. The input of intervenors assists the Board in making decisions and establishing policies which are in the broad public interest. Typically, costs are awarded to groups which represent ratepayers. Utility costs are recovered from ratepayers, who are directly affected by the decisions made by the Board for that reason and by reason of the fact that they require utility service. It is therefore important that their perspective be adequately represented. Generators require service from the transmission system, and in that sense they are similar to ratepayers in some circumstances. As noted above, in the current consultation the groups representing generators have been granted eligibility for a cost award on that basis. The Board is also concerned with controlling the level of costs which are awarded. The Board only awards costs if the participation by the intervenor has been responsible and of value to the Board; a finding of cost eligibility does not guarantee that an award of costs will be made. In addition, the Board establishes the maximum rates that are payable and frequently establishes the maximum number of hours for which costs will be awarded in consultation processes. It has thus far done so in the current consultation.

Second, while OSEA's request for cost eligibility did not identify that it receives grants and funds from public sector entities, the fact that an organization receives funding from public sector entities does not disqualify it from an award of costs if it is otherwise eligible. The Board is aware that a number of intervenors which are eligible for costs also access funding from sources other than the intervenor's members.

Third, the fact that OSEA, or any other organization, conducts direct lobbying activities with government in relation to energy policy does not disqualify it for an award of costs. The Board is aware that many of the intervenors which appear before it, and which are eligible for cost awards, also undertake advocacy efforts directly with government.

Fourth, while it is true that other generator organizations have been found eligible for costs, the Board is sensitive to the concern about potential duplication amongst these groups. It has the same concern with respect to ratepayer representatives. The Board has addressed this concern directly in its Practice Direction by indicating that, in determining the level of any cost award, the Board will consider whether the party has made reasonable efforts to co-operate with other parties and to combine its intervention with other similarly interested parties.

Decision on Motion to Review (EB-2010-0059); p. 5

Based on the content of some of the requests for cost eligibility, the Board considers it desirable to confirm the following in relation to cost awards generally:

- i. The Board will only award costs for contributions that the Board considers to be relevant to the issues to be considered by the Board in these consultations and that contribute to a better understanding by the Board of one or more of those issues;

- ii. Where similar interests are shared by stakeholders that are eligible for cost awards, the Board expects that reasonable efforts will be made to combine participation or to cooperate. The Board will consider any lack of cooperation when determining the amount of a cost award;
- iii. Cost awards are available in relation to the costs associated with the counsel and/or consultant fees (among others) incurred specifically for the purposes of participating in activities that are eligible for an award of costs. Cost awards are not available in relation to time spent by employees or officers of a participant.
- iv. Except as may otherwise be expressly provided by the Board at the relevant time, the hourly limits for eligible activities apply to each eligible participant, and not to each individual that may be acting on behalf of an eligible participant.

DATED at Toronto, February 1, 2011

ONTARIO ENERGY BOARD

Original signed by

Cynthia Chaplin
Chair and Presiding Member