



EB-2011-0004

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 to
develop guidance to the electricity industry in
relation to establishment, implementation and
promotion of a smart grid in Ontario.

BEFORE Ken Quesnelle
Presiding Member

DECISION ON COST ELIGIBILITY

On January 13, 2011, the Board issued a letter announcing a consultation to develop guidance to electricity distributors, transmitters and other regulated entities for which the Board regulates fees and expenditures that propose to undertake smart grid activities in Ontario. The consultation is part of the Board's response to a directive (the "Directive") issued by the Minister of Energy pursuant to section 28.5 of the *Ontario Energy Board Act*, 1998 (the "Act"). The Board's January 13, 2011 letter indicated that cost awards would be available to eligible persons under section 30 of the Act in relation to their participation in this consultation, and that the costs awarded would be recovered from all rate-regulated licensed electricity distributors and transmitters. The due date for the filing of cost eligibility requests was January 24, 2011.

The Board received requests for cost eligibility from the following participants on or before January 24, 2011:

- Building Owners and Managers Association of the Greater Toronto Area ("BOMA")
- Kinectrics
- London Property Management Association ("LPMA")

- Ontario Sustainable Energy Association (“OSEA”)
- REGEN Energy

Electricity distributors and transmitters were given until February 4, 2011 to file any objections that 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 or transmitters.

Based on the criteria set out in section 3 of the Board’s *Practice Direction on Cost Awards* (the “Practice Direction”), the Board has determined that the following participants are eligible for an award of costs in this consultation: BOMA and LPMA.

With regard to the request by Ontario Sustainable Energy Association (OSEA) the Board has found it eligible for an award of costs in this consultation due to the particular circumstances of this consultation. In assessing the cost eligibility of an association such as OSEA, the Board has previously stated that it will consider the association’s membership, rather than considering the association as a distinct entity separate and apart from its members.¹ The Board notes that OSEA is an association whose membership consists predominantly of commercial service providers and generators. The Board finds that OSEA is, by virtue of its membership, *prima facie* not eligible for an award of costs under the Practice Direction. It has been the Board’s practice that commercial entities such as commercial service providers are ineligible for an award of costs. Commercial entities primarily represent their own commercial interests rather than “primarily representing” a public interest, even if they may be in the business of providing services that can be said to serve a public interest relevant to the Board’s mandate. Furthermore, section 3.05 of the Practice Direction provides that generators, among other regulated entities, are generally not eligible for a cost award.

While OSEA would therefore normally be ineligible for an award of costs, the Board believes that it is appropriate to grant cost award eligibility to OSEA in the circumstances of this consultation. This exercise of discretion is in keeping with sections 3.04 and 3.07 of the Practice Direction. The former contemplates that the Board may consider any other factor the Board considers relevant to the public interest

¹ See the Decision on Issues and Cost Eligibility issued on March 22, 2011 in the Toronto Hydro CDM proceeding (EB-2011-0011). Specifically, the Board stated as follows: “To the extent that an entity’s membership is comprised largely of organizations that would themselves be ineligible for cost awards, so too should the entity be considered ineligible absent special circumstances.”

in determining cost award eligibility, and the latter contemplates that regulated entities may be found eligible if special circumstances so warrant.

The Board finds that OSEA provides important and unique perspectives in relation to the Board's mandate in this consultation. The Directive that is the impetus for this consultation directs that the Board, in developing guidance in relation to smart grid, and in evaluating the smart grid plans and activities undertaken by regulated entities, shall be guided by, and adopt where appropriate, particular objectives of a smart grid including customer participation in renewable generation and power system flexibility that enables distributed renewable generation. As indicated above, OSEA's membership includes several entities that are involved in renewable generation and commercial service providers which are active in the renewable generation sector, in particular in relation to consumer-based generation. The Board has determined that efficiency will be served by granting cost award eligibility to OSEA given the diversity of its membership. Therefore, based on OSEA's unique perspectives and the inherent efficiencies gained as a result of its association structure the Board has determined that OSEA should be eligible for an award of costs in the context of this consultation.

The Board has determined that Kinectrics, and REGEN Energy are not eligible for cost awards. Kinectrics is a consultancy and REGEN Energy provides building control automation and demand response services. In the view of the Board these participants do not meet the criteria for eligibility set out in section 3.03 of the Practice Direction. As indicated above, participants whose members represent primarily commercial interests are not eligible to apply for an award of costs. The Board does not believe that there are factors that would warrant granting cost award eligibility to these two participants in the context of this consultation.

The Board will require co-operation among participants with similar interests, and will consider any lack of co-operation when determining the amount of a cost award.

ISSUED at Toronto, April 4, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary