

ONTARIO ENERGY BOARD

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 a regulatory framework for regional planning by
electricity transmitters and electricity distributors.

MOTION RECORD

THE TOWN OF ATIKOKAN

**MOTION FOR REVIEW OF BOARD DECISION ON COST AWARDS ISSUED
MAY 4, 2011**

Filed May 24, 2011

WEILER, MALONEY, NELSON
Barristers & Solicitors
1001 William Street, Suite 201
Thunder Bay ON P7B 6M1

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Counsel for the Town of Atikokan

INDEX

TAB CONTENTS

1. The Notice of Motion for Review of Board Decision on Cost Awards (pages 1 to 5);
2. Affidavit of Jennifer Kingston dated May 24, 2011, with attached correspondence from the Town of Atikokan dated May 24, 2011 (Schedule "A" pages 6 to 8);
3. Ontario Energy Board letter dated April 1, 2011 to interested parties initiating a consultation process to assist the Board in the development of a regulatory framework for regional planning. (Schedule "B" pages 9 to 14);
4. Letter from Town of Atikokan dated April 13, 2011 to the Ontario Energy Board indicating the Town of Atikokan's intent to attend the stakeholder sessions and request costs eligibility (Schedule "C" pages 15 to 19);
5. Ontario Energy Board Decision on Cost Eligibility in respect of consultation process to develop a regulatory framework for regional planning by electricity transmitters and electricity distributors (EB-2011-0043) dated May 4, 2011 (Schedule "D" pages 20 to 24);
6. Section 30 of the *Ontario Energy Board Act, 1998* (Schedule "E" page 25);
7. Section 3 of the Board's Practise Direction on Cost Awards (Schedule "F" pages 26 and 27); and
8. Rule 7, 8, 41, 42, and 44 of the Board's Rules of Practise and Procedure (Schedule "G" pages 28 to 31).

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 a regulatory framework for regional planning by electricity transmitters and electricity distributors.

NOTICE OF MOTION

THE INTERESTED PARTY, THE TOWN OF ATIKOKAN will make a Motion to the Board, pursuant to Rules 1.03, 5.01(a), 7.01, 7.02, 8.01, 8.02, 42.01, 42.03, 43.01, and 44.01(a) of the Board's Rules of Practice and Procedure, for review of the Board's Decision on Cost Eligibility dated May 4, 2011, on a date and time to be determined by the Board, at the Board's hearing room on the 25th floor of 2300 Yonge St., Toronto, Ontario M4P 1E4.

PROPOSED METHOD OF HEARING, THE TOWN OF ATIKOKAN requests the motion to be in writing.

THE MOTION IS FOR AN ORDER:

1. That the Board review and vary parts of the Decision on Cost Eligibility determining that:
 - (a) Special circumstances exist that would cause the Board to exercise its discretion in favour of granting cost award eligibility to the Town of Atikokan, pursuant to section 3.07 of the Board's Practice Direction on Cost Awards.
 - (b) The Town of Atikokan is eligible for a cost award in this proceeding.
 - (c) The Town of Atikokan primarily represents the direct interests of ratepayers in relation to regulated services.
2. Costs of this motion.
3. Such further and other relief as counsel may request and that seems just to the Board.

THE GROUNDS FOR THE MOTION ARE:

Background

1. On April 1, 2011, the Board issued a letter to interested parties initiating a consultation process to assist the Board in the development of a regulatory framework for regional planning. That letter 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 consultation process, and that any costs awarded would be recovered from licensed rate-regulated electricity transmitters and licensed rate-regulated electricity distributors based on their respective transmission or *distribution revenues* (italics ours).
2. The "Consultation Overview" section in the April 1, 2011 letter states that the OEB intends to employ the principle in the consultation of a "co-ordinated solution.... allowing for a *consideration of broader needs and involvement by a larger set of stakeholders*" (italics ours).
3. On May 4, 2011, the Board issued its Decision on Cost Eligibility and determined that the Town of Atikokan was not eligible because it is the effective owner of an electricity distributor Atikokan Hydro.
4. The Town of Atikokan by motion respectfully requests that the Board review and vary parts of the Decision on Cost Eligibility and exercise its discretion to order that the Town of Atikokan is eligible for costs in this proceeding.

Threshold Issue

5. The Town of Atikokan relies on Rule 44.01 (a) (i) as its grounds for this motion. The Town of Atikokan submits the Board made an error in fact and did not consider the special circumstance that although the Town of Atikokan owns an electricity distribution company it has never received dividends or interest payment on its capital from it.
6. The Board made an error in fact and did not consider the special circumstance that although the Town of Atikokan owns an electricity distribution company it has never received dividends or interest from it. Without considering this special circumstance in its discretion to refuse cost eligibility to the Town of Atikokan it raises a question as to the correctness of the Board's Decision on Cost Eligibility.

7. This fact is public record and has been made known to the Board in previous submissions filed by Atikokan Hydro Inc. and therefore should be considered.¹
8. Alternatively, the Town of Atikokan asks the Board to exercise its discretion pursuant to 1.03, 5.01 (a), 7.01 and 7.02 and accept into evidence the facts contained in the Affidavit of Jennifer Kingston dated May 24, 2011, to supplement the original letter from the Town of Atikokan dated April 13, 2011 to the Ontario Energy Board.

Detailed Grounds

9. Relying on section 3.05 (b) the Board declined to grant the Town of Atikokan cost eligibility because it is the effective owner of Atikokan Hydro. The Town of Atikokan is the sole shareholder of Atikokan Hydro.
10. As a result of application of section 3.05 (b), section 3.03 does not apply and the issue becomes rather if section 3.07 applies. Section 3.07 considers whether special circumstances exist that would cause the Board to exercise its discretion in favour of granting cost award eligibility to a party that would otherwise be ineligible.²
11. The special circumstances in this case are that Atikokan Hydro Inc. serves a large geographical area with a small population so that although it does have the legal capability to declare a dividend to its shareholder, Atikokan Hydro Inc. has never been financially in a position to do so.
12. The fact the Town of Atikokan does not receive any dividends or interest payments on its capital from its ownership of Atikokan Hydro means it receives no direct revenue from owning an electricity distribution company. Atikokan Hydro is and has been essentially operating under a breakeven scenario where the small return earned is used to fund the capital expenditure programs of Atikokan Hydro. Atikokan Hydro's revenue is applied to maintain a safe and reliable local electricity distribution company that meets the needs of its customers.
13. By Atikokan Hydro never paying dividends or interest on capital to the Town of Atikokan the Town of Atikokan cannot be said to be primarily representing their own commercial interests, but rather are primarily representing the public interests of their constituent ratepayers.³ By not mandating Atikokan Hydro to pay it dividends or interest on capital demonstrates the Town of

¹ *Manager's Summary Atikokan Hydro Inc.* 2005 in EB-2005-0335 (page 1, point 9).

² See *Decision on Issues and Cost Eligibility* dated on March 11, 2011 in EB-2011-0011 (page 5).

³ See *Decision on Cost Eligibility* dated on April 4, 2011 in EB-2011-0044 (page 2). The mischief prevented by section 3.05 of the Board's Practise Direction on Cost Awards, as discussed in EB-2011-0044, do not apply in this case.

Atikokan's position that it "primarily represents a public interest" and not its "own financial interests".

14. The Town of Atikokan submits this fact constitutes a special consideration worthy of the Board exercising its discretion pursuant to 3.07 of the Board's Practise Direction on Cost Awards.
15. The Town of Atikokan represents the direct interests of its ratepayers in relation to regulated services. The regulations with respect to planning and cost responsibility between transmitters, distributors, loads and generators when projects involved multiple connections and service areas is in the public interest of the Town of Atikokan and the ratepayers it represents.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Jennifer Kingston, and attached Schedule sworn May 24, 2011.
2. Such further and other documentary evidence as Counsel may wish to use and the Board may accept.

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Counsel for the Town of Atikokan

TO: ONTARIO ENERGY BOARD
P.O. Box 2319
2300 Yonge Street
Toronto, ON M4P 1E4
Kirsten Walli, Board Secretary
Tel.: 416-440-7677
Fax: 416-440-7656
Email: boardsec@ontarioenergyboard.ca

TO: ALL OTHER INTERESTED PARTIES

ONTARIO ENERGY BOARD

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 a regulatory framework for regional planning by electricity transmitters and electricity distributors.

THE TOWN OF ATIKOKAN

NOTICE OF MOTION

FOR REVIEW OF BOARD DECISION ON COST AWARDS ISSUED MAY 4, 2011

Filed May 24, 2011

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Counsel for the Town of Atikokan

ONTARIO ENERGY BOARD

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

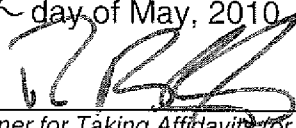
AND IN THE MATTER OF cost award eligibility for interested parties in a consultation process to develop a regulatory framework for regional planning by electricity transmitters and electricity distributors.

AFFIDAVIT OF JENNIFER KINGSTON

I, JENNIFER KINGSTON, OF THE CITY OF THUNDER BAY, IN THE PROVINCE OF ONTARIO, HEREBY MAKE OATH AND SAY AS FOLLOWS:

1. I am a Legal Assistant with the law firm Weiler, Maloney, Nelson, counsel for the Town of Atikokan, an interested party in a consultation process to develop a regulatory framework for regional planning by electricity transmitters and electricity distributors.
2. Attached to this my Affidavit is a true copy of correspondence dated May 24, 2011 from the Town of Atikokan to the Ontario Energy Board.
3. This Affidavit is made in support of a motion for Review of Board Decision on Cost Awards issued May 4, 2011.
4. I make this Affidavit for no improper purpose.

SWORN BEFORE ME at the City of
Thunder Bay, in the District of Thunder
Bay
this 24th day of May, 2010


Commissioner for Taking Affidavits (or as may be)

ROSS B. JUDGE


JENNIFER KINGSTON



Town of Atikokan

Box 1330, 120 Marks Street
Atikokan, Ontario P0T 1C0

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Director of Public Works
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7

May 24, 2011

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
Toronto, ON
M4P 1E4

Attention: Kirsten Walli, Board Secretary
Tel.: 416-440-7677
Fax: 416-440-7656
Email: boardsec@ontarioenergyboard.ca

RE: Regional Planning for Electricity Infrastructure EB-2011-0043

Dear Ms. Walli

On May 4, 2011, the Board issued its Decision on Cost Eligibility and determined that the Town of Atikokan was not eligible because it is the effective owner of Atikokan Hydro, an electricity distributor. This letter is to provide the Board clarification of fact in support of the notice of motion to review the Board's Decision dated May 4, 2011.

Special Circumstances

The Hydro Electric Commission of the Township of Atikokan was originally formed in 1956 when the Township of Atikokan purchased the distribution system from Ontario Hydro. Since then it has evolved into Atikokan Hydro Inc. In 2000 Atikokan Hydro Inc became incorporated. The assets and operations of the former commission were transferred to the new corporation on October 31, 2002. The Township of Atikokan is the sole shareholder of Atikokan Hydro Inc. Its Board of Directors, appointed by Town Council, runs Atikokan Hydro Inc. Atikokan Hydro has never paid the Town of Atikokan any dividends or interest on its capital. Atikokan Hydro serves a large geographical area with a small population. Although it does have the legal capability to declare a dividend to its shareholder, Atikokan Hydro Inc. has never been financially in a position to do so.

Ms. Kirsten Walli
Page 2
May 24, 2011

Public Interest

The Town of Atikokan represents the direct interest of its constituent ratepayers in relation to regulated services. The regulations with respect to planning and cost responsibility between transmitters, distributors, loads and generators when projects involved multiple connections and service areas is in the public interest of the Town of Atikokan and the ratepayers it represents.

The Town of Atikokan looks forward to being an important and valuable contributor to the consultation on development of a regulatory framework for regional planning, and looks forward to receiving your decision on these clarified facts.

Yours truly

A handwritten signature in cursive script, appearing to read "Dennis Brown".

Dennis Brown
Mayor

Ontario Energy
Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416-481-1967
Facsimile: 416-440-7656
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Commission de l'énergie
de l'Ontario
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Numéro sans frais: 1-888-632-6273



BY E-MAIL AND WEB POSTING

April 1, 2011

**To: All Licensed Electricity Transmitters
All Licensed Electricity Distributors
The Ontario Power Authority
All Other Interested Parties**

**Re: Regional Planning for Electricity Infrastructure
Board File Number: EB-2011-0043**

The Board is initiating a consultation aimed at promoting the cost-effective development of electricity infrastructure through coordinated planning on a regional basis between licensed distributors and transmitters. The consultation will be conducted in stages, with a view to developing a policy framework for regional planning that will likely be implemented through appropriate amendments to the Transmission System Code ("TSC") and the Distribution System Code. There will be links to the consultations on the renewed regulatory framework and smart grid implementation.

This letter provides an overview of this consultation and of how to participate in it.

Background

Ontario's electricity sector has long recognized the value of regional planning – where transmission and distribution facilities are planned jointly by the transmitter and one or more distributors.

The Transmission System Code governs transmitters in relation to, among other things, planning and cost responsibility for new assets. The framework as set out in the TSC:

- Treats a distributor as a transmission "customer" who, in the normal course, would pay for connection-related upgrades to a transmission system that are triggered by the distributor (including as a result of the connection of renewable energy generation facilities to the distributor's distribution system);
- Requires a transmission capacity evaluation process to be undertaken when the available capacity on a connection facility falls below a certain pre-set percentage of total normal supply capacity; and

- Does not require transmission customers to pay for connection-related upgrades that at the relevant time were 'otherwise planned' by the transmitter, except for any advancement costs.

A revised TSC was issued following two successive consultation processes (RP-2002-0120 and RP-2004 0220) in July, 2005. Shortly before that time, the Ontario Power Authority ("OPA") was created with the objective of, among other things, conducting independent planning for transmission in Ontario. The OPA is expected to have a role in regional planning initiatives, including through the development of the Integrated Power System Plan.

The *Green Energy and Green Economy Act, 2009* and, more recently, the government's Long Term Energy Plan contemplate the connection of increased numbers of renewable generation facilities. This in turn is expected to drive the need for transmission enhancements and reinforcements, including in circumstances where the renewable connection is at the distribution level. This is, in fact, the circumstance contemplated by the recent amendments to Hydro One Networks Inc.'s transmission licence further to a directive issued to the Board by the Minister of Energy. Among other things, the licence amendments require Hydro One to work with the OPA to establish the scope and timing of increases to short circuit and/or transformation capacity at transmission stations to enable the connection of small-scale renewable generation over a specified period, and then to implement the projects based on the OPA's recommendations.

Consultation Overview

This consultation is intended to develop a regulatory framework for regional planning, having regard to the principles articulated in earlier TSC consultations as well as the following:

- that an optimized solution is desirable as being the lowest cost in the long term;
- that a coordinated solution is desirable as allowing for a consideration of broader needs and for involvement by a larger set of stakeholders; and
- that cost responsibility for optimized solutions is attributed in an appropriate manner.

It is anticipated that this consultation will focus on the development of regional planning requirements that will apply in circumstances where a localized geographic issue can be resolved through a number of different transmission and/or distribution solutions.

Stakeholder Meeting

The first stage in the consultation process will be a stakeholder meeting that will provide a forum for discussion of topics such as:

- objectives for regional planning;
- a status check on current practice;
- best practices for regional planning and examples of successful processes;
- cost responsibility for optimized, regional infrastructure projects; and

- the identification of any barriers to regional planning in the current regulatory framework and how these may best be addressed.

The stakeholder meeting will be held at the Board's offices on Thursday, May 12, 2011. Further details will be made available in the near future.

Staff Discussion Paper

A Board staff Discussion Paper that sets out Board staff's proposals for regional planning in Ontario will then be released for comment. In developing this Discussion Paper, it is expected that Board staff will build on the discussions during the stakeholder meeting as well as on written comments¹ provided by stakeholders in the early stages of a prior consultation on cost responsibility for load connections to transmission systems (EB-2008-0003).

Board Policy

The final stage in this consultation process will be consultations regarding proposed regulatory instruments (likely the TSC and the Distribution System Code) that will embody the Board's policy on regional planning.

Links to Other Initiatives

On December 17, 2010, the Board announced an initiative to renew the regulatory framework for electricity. The regional planning consultation is most closely related to Distribution Network Investment Planning (EB-2010-0377). The latter consultation is concerned, more broadly, with utility planning and prioritization. This regional planning consultation, for its part, will examine the more specific circumstance of how a particular infrastructure need can be addressed through regional planning between utilities. The two consultations will be conducted in parallel, and will be managed with a view to ensuring that they result in a principled and cohesive framework.

On January 13, 2011, and further to a directive received from the Minister of Energy, the Board initiated a consultation on guidance to be provided to licensed electricity transmitters and distributors (among possible others) in relation to the implementation of a smart grid (EB-2011-0004). Among other things, the directive requires the Board to consult for the purpose of developing a regional or otherwise coordinated approach to the planning and implementation of smart grid activities. There will be much common ground between the Smart Grid consultation and this broader regional planning initiative, and it is expected that these two projects will be managed in a manner that optimizes the use of stakeholder resources.

Invitation to Participate

¹ These can be found on the Board's website at:

<http://www.ontarioenergyboard.ca/OEB/Industry/Regulatory+Proceedings/Policy+Initiatives+and+Consultations/Transmission+Connection+Cost+Responsibility+Review/Transmission+Connection+Cost+Responsibility+-+Subs>

The Board encourages participation in this consultation process by all interested parties. Those interested in participating should indicate their intent by letter addressed to the Board Secretary by **April 13, 2011** in accordance with the filing instructions set out below. The letter should include:

- i. a statement as to whether the participant intends to attend the stakeholder meeting referred to above; and
- ii. a statement as to whether the participant wishes to request cost eligibility, all requests for cost eligibility should comply with the requirements referred to under "Cost Awards" below.

Cost Awards

Cost awards will be available to eligible persons under section 30 of the *Ontario Energy Board Act, 1998* in relation to their participation in this consultation process. The costs to be awarded will be recovered from all licensed rate-regulated electricity transmitters and all licensed rate-regulated distributors based on their respective transmission or distribution revenues.

Appendix A contains further details regarding cost awards for this consultation, including in relation to eligibility requests and objections, and eligible activities. In order to facilitate a timely decision on cost eligibility, the deadlines for filing cost eligibility requests and objections will be strictly enforced.

Filing Material with the Board

Three (3) paper copies of each filing must be provided, and should be sent to:

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, Ontario M4P 1E4

The Board requests that interested parties make every effort to provide electronic copies of their filings in searchable/unrestricted Adobe Acrobat (PDF) format, and to submit their filings through the Board's web portal at www.errr.ontarioenergyboard.ca. A user ID is required to submit documents through the Board's web portal. If you do not have a user ID, please visit the "e-filings services" webpage on the Board's website at www.ontarioenergyboard.ca, and fill out a user ID password request. Additionally, interested parties are requested to follow the document naming conventions and document submission standards outlined in the document entitled "RESS Document Preparation – A Quick Guide" also found on the e-filing services webpage. If the Board's web portal is not available, electronic copies of filings may be filed by e-mail at boardsec@ontarioenergyboard.ca.

Those that do not have internet access should provide a CD or diskette containing their filing in PDF format.

Filings to the Board must be received by the Board Secretary by **4:45 p.m.** on the required date. They must quote file number **EB-2011-0043** and include your name, address, telephone number and, where available, your e-mail address and fax number.

All written comments, requests for cost award eligibility and other filings received by the Board in relation to the initiatives described in this letter will be available for viewing at the Board's offices and will be placed on the Board's website.

If the written comment, request for cost award eligibility or other filing is from a private citizen (i.e., not a lawyer representing a client, not a consultant representing a client or organization, not an individual in an organization that represents the interests of consumers or other groups, and not an individual from a regulated entity), before making the written comment, request or other filing available for viewing at the Board's offices or placing the written comment, request or other filing on the Board's website, the Board will remove any personal (i.e., not business) contact information from the written comment, request or other filing (i.e., the address, fax number, phone number, and e-mail address of the individual). However, the name of the individual and the content of the written comment, cost award eligibility request or other filing will be available for viewing at the Board's offices and will be placed on the Board's website.

Any questions regarding this consultation process should be directed to Laurie Reid at Laurie.Reid@ontarioenergyboard.ca or at 416-440-7623. The Board's toll-free number is 1-888-632-6273.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary

Attachment

Appendix A: Cost Awards

Appendix A Cost Awards

Eligibility

The Board will determine eligibility for costs in accordance with its *Practice Direction on Cost Awards*. Any person requesting cost eligibility must file with the Board a written submission to that effect by **April 13, 2011**, identifying the nature of the person's interest in this process and the grounds on which the person believes that it is eligible for an award of costs (addressing the Board's cost eligibility criteria as set out in section 3 of the Board's *Practice Direction on Cost Awards*). An explanation of any other funding to which the person has access must also be provided, as should the name and credentials of any lawyer, analyst or consultant that the person intends to retain, if known. All requests for cost eligibility will be posted on the Board's website.

Rate-regulated licensed electricity transmitters and rate-regulated licensed distributors will be provided with an opportunity to object to any of the requests for cost award eligibility. If an electricity transmitter or distributor has any objections to any of the requests for cost eligibility, such objections must be filed with the Board by **April 28, 2011**. Any objections will be posted on the Board's website. The Board will then make a final determination on the cost eligibility of the requesting parties.

Eligible Activities

Cost awards will be available to eligible persons in relation to their participation in the stakeholder meeting, to a **maximum of actual meeting time plus 50% of meeting time** for preparation and reporting.

The Board anticipates that other activities associated with this consultation, such as the provision of written comments on the Board staff Discussion Paper, will also be eligible for cost awards. Further details will be provided at the relevant time.

Cost Awards

When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of its *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied. The Board expects that groups representing the same interests or class of persons will make every effort to communicate and co-ordinate their participation in this process.

The Board will use the process set out in section 12 of its *Practice Direction on Cost Awards* to implement the payment of the cost awards. Therefore, the Board will act as a clearing house for all payments of cost awards in this process. For more information on this process, please see the Board's *Practice Direction on Cost Awards* and the October 27, 2005 letter regarding the rationale for the Board acting as a clearing house for the cost award payments. These documents can be found on the Board's website at www.ontarioenergyboard.ca on the "Rules, Guidelines and Forms" webpage.



Town of Atikokan

Box 1330, 120 Marks Street
Atikokan, Ontario P0T 1C0

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Administration/Accounting
807-597-1234
Community Services
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Director of Public Works
807-597-1234 x231
Fire/Building
807-597-1234 x228
Office Fax: 807-597-6186
www.atikokan.ca

15

April 11, 2011

VIA EMAIL ONLY

Ontario Energy Board
2300 Yonge Street
Suite 700
Toronto ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Notice of Intervention by the Town of Atikokan

Re: Regional Planning for Electricity Infrastructure (EB-2011-0043)

Intent to Participate

In response to the Ontario Energy Board invitation, dated April 1, 2011, to participate in the consultation process that is being initiated by the Board on Regional Planning for Electricity Infrastructure (EB-2011-0043), the Town of Atikokan is requesting recognition as an Interested Party.

Background

The Town of Atikokan is the location of a large thermal generating station undergoing conversion from coal to a biomass fuel.

Town of Atikokan's Substantial Interest

The Town of Atikokan intends to build firstly, on the earlier co-operation with the City of Thunder Bay and Northwestern Ontario Municipal Association (NOMA) in the Board's review of the Integrated Power System Plan (EB-2007-0707), and secondly, on Common Voice Northwest (CVNW) and the City of Thunder Bay's recent submissions on the draft Supply Mix Directive.

The Town of Atikokan has a substantial interest in this consultation proceeding because it:

1. Represents the direct interests of the ratepayers in its own population of approximately 3300 resident;
2. is the location of one of two large thermal generating stations in the Northwest Region; and
3. serves as a local supply and support services hub for the forest and mining industry and other northern and First Nation communities.

The Town of Atikokan will be able to provide valuable insight into not only issues related to energy but also to environmental and other social imperatives, including but not limited to social imperatives that are geographical, economic and commercial.

Co-operation

The Town of Atikokan intends to continue the co-operation, established by NOMA in the EB-2007-0707 hearings on the IPSP, with other Interested Parties, namely:

1. Northwestern Ontario Municipal Association (NOMA), which is an alliance between representing municipalities in the Northwest; NOMA also will be seeking status as an Interested Party.

2. NOACC, the association of Chambers of Commerce throughout the Northwest Region; NOACC will also be seeking status as an Interested Party; and
3. the City of Thunder Bay, regional hub of the Northwest, the largest City (population 113,000), and site of one of the two large thermal generating stations in the Northwest Region; the City of Thunder Bay will also be seeking status as an Interested Party.

The Town of Atikokan, NOMA, NOACC and the City of Thunder Bay have agreed to co-operate and have, therefore, authorized Weiler Maloney Nelson to make submissions in the common interests of all of them.

Attendance May 12, 2011

John Cyr and Nick Melchiorre, partners in the law firm of Weiler, Maloney, Nelson, as counsel in this instance for the City of Thunder Bay, will be spokespersons attending the OEB stakeholder meeting on May 12, 2011 for purposes of speaking on behalf of the Town of Atikokan and informing the Town of Atikokan as to the proceedings.

Cost Awards

The Town of Atikokan will seek designation as a person, under Section 30 of the *Ontario Energy Board Act, 1998*, eligible to receive costs.

The Town of Atikokan in combination with the City of Thunder Bay and NOMA in represents the direct interest of ratepayers throughout Northwestern Ontario. Those ratepayers are often dependent for their livelihood on a single industrial employer in a town. The development of an adequate electricity system in the Northwest Region is essential for the viability of those industrial plants.

A reliable and affordable supply of electricity is a necessity for economic wellbeing.

Adequate supply of energy is also essential for an appropriate standard of living in the municipal and First Nation communities throughout the Northwest Region.

The Town of Atikokan represents a public interest in seeking to ensure the reliability and security of electricity supply for both the ratepayers in northwestern Ontario and the industries that employ them. The Town of Atikokan in particular represents the direct interest of ratepayers in its community. Those ratepayers are dependent for their livelihood on a single industrial employer and the thermal generating station, and now depend also on the revival of the forest industry and robust mineral exploration programs in the Northwest Region for growth. A reliable and affordable supply of electricity is a necessity for economic wellbeing.

For Purposes of Notice of the Town of Atikokan:

Dennis Brown, Mayor, Town of Atikokan, Box 1330, Atikokan, Ontario P0T 1C0;
denbrown@tbaytel.net

and

Andre Morin, CAO, Town of Atikokan, Box 1330, Atikokan, Ontario P0T 1C0
andre.morin@atikokan.ca

Spokespersons for the Town of Atikokan:

- John A. Cyr, C.S. (Corporate and Commercial Law), Partner in the firm of Weiler, Maloney, Nelson (called to the Bar in 1980, licenced by the Law Society of Upper Canada to practice law in Ontario);
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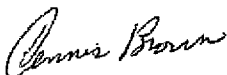
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Please contact the undersigned should further information or clarification be required.

Respectfully submitted.

Yours truly



Dennis Brown
Mayor

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2011-0043

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 a
regulatory framework for regional planning by electricity
transmitters and electricity distributors.

BEFORE: Karen Taylor
Presiding Member

Paula Conboy
Member

DECISION ON COST ELIGIBILITY

On April 1, 2011, the Ontario Energy Board (the "Board") issued a letter to interested parties initiating a consultation process to assist the Board in the development of a regulatory framework for regional planning. That letter 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 consultation process, and that any costs awarded would be recovered from licensed rate-regulated electricity transmitters and licensed rate-regulated electricity distributors based on their respective transmission or distribution revenues.

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

- Association of Major Power Consumers in Ontario ("AMPCO");
- Association of Power Producers of Ontario ("APPrO");
- Canadian Manufacturers & Exporters ("CME");
- City of Thunder Bay ("Thunder Bay");
- Consumers Council of Canada ("CCC");

- Energy Probe Research Foundation ("Energy Probe");
- London Property Management Association ("LPMA");
- National Chief's Office on behalf of the Assembly of First Nations ("NCO");
- Nishnawbe Aski Nation ("NAN");
- Northwestern Ontario Associated Chambers of Commerce ("NOACC");
- Northwestern Ontario Municipal Association ("NOMA");
- Ontario Sustainable Energy Association ("OSEA");
- Pollution Probe;
- Town of Atikokan ("Atikokan"); and
- Vulnerable Energy Consumers Coalition ("VECC").

The cost eligibility requests from APPrO and VECC were filed after the deadline set for that purpose in the Board's April 1, 2011 letter. The Board has determined that it will accept those requests notwithstanding their late filing.

The Board's April 1, 2011 letter made provision for the filing of objections by electricity transmitters and electricity distributors in relation to any of the requests for cost award eligibility. The Board did not receive any objections from transmitters or distributors within the deadline set for that purpose in the Board's letter.

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 process: AMPCO; CME; CCC; Energy Probe; LPMA; NCO; NAN; Pollution Probe; and VECC.

APPrO would not usually be eligible for an award of costs, due to its inclusion in the list of ineligible parties in section 3.05 of the Practice Direction ("...generators...either individually or in a group"). Under section 3.06 of the Practice Direction, however, such a participant may nonetheless be eligible for a cost award if the participant is a customer of the applicant. Generators are customers of both transmitters and distributors, who in turn for cost awards purposes are considered to be the applicants in the context of this consultation. As stated in the Board's April 1, 2011 letter, this consultation (i) is aimed at promoting the cost-effective development of electricity infrastructure that may be required to accommodate, among others, the connection of renewable generation facilities; and (b) will consider the appropriate attribution or

assignment of cost responsibility for optimized infrastructure solutions. Given the impact that this process may have on prospective generators and given the unique perspective that generators will bring to this process, the Board will allow APPrO to be eligible for cost awards in this consultation.

OSEA is an association whose membership consists predominantly of commercial service providers, generators or members that have plans to generate electricity in the future. The Board finds that OSEA is, by virtue of its membership, *prima facie* not eligible to apply for an award of costs under the Practice Direction.¹ However, the Board finds that OSEA may, like APPrO, also provide an important and unique perspective in relation to the Board's mandate in this consultation and will therefore allow OSEA to be eligible for an award of costs in this instance.

Thunder Bay, Atikokan, NOMA and NOACC each individually applied for cost award eligibility, and each also indicated in its filing an intention to cooperate and join with the other three in respect of their participation in this consultation process.

The Board finds that Thunder Bay and Atikokan, each of which is the effective owner of an electricity distributor, are not eligible for an award of costs.

The Board notes that NOMA's members are comprised of municipalities and townships located in the Northwestern region of the Province, some of which own an electricity distributor but most of which do not. NOMA's letter requesting cost award eligibility indicates that it: (i) represents the municipal communities throughout the Northwest Region; (ii) understands and can speak to the direct interests of the ratepayers in that Region; (iii) is keenly aware of the geographical and technical issues relating to electricity generation and transmission/distribution in the Region; and (iv) will be able to provide valuable insight into not only issues related to energy but also to environmental and other social imperatives, including social imperatives that are geographical, economic and commercial. Based on NOMA's letter, the Board does not believe that NOMA primarily represents the direct interests of consumers (ratepayers) in relation to regulated services. The Board notes that this consultation is relatively narrow in scope, the focus being on the development of regional planning requirements that will apply in

¹ This is consistent with the finding made in two other recent Board decisions regarding OSEA's eligibility for an award of costs; specifically, the April 4, 2011 Decision on Cost Eligibility in relation to the smart grid consultation (EB-2011-0004) and the April 7, 2011 Decision on Motion to Review in relation to the Ontario Power Authority fees proceeding and two applications pertaining to conservation and demand management (EB-2010-0279/EB-2010-0331/EB-2010-0332).

circumstances where a localized geographic issue can be resolved through more than one transmission and/or distribution solution. Based on NOMA's letter, the Board does not believe that NOMA represents a public interest relevant to the Board's mandate in the context of the specific scope of this consultation. The Board therefore finds that NOMA is not eligible for an award of costs in this consultation.

NOACC's members are Chambers of Commerce representing the business communities in their respective Northwestern Ontario regions. NOACC's letter requesting cost award eligibility indicates that it: (i) represents the member businesses of its member Chambers of Commerce throughout the Northwest Region; (ii) understands and can speak to the direct business interests of the ratepayers in that Region; (iii) is keenly aware of the geographical and technical issues relating to electricity generation and transmission/distribution in the Region; and (iv) will be able to provide valuable insight into not only issues related to energy but also to environmental and other social imperatives, including social imperatives that are geographical, economic and commercial. Under section 3.03 of the Practice Direction, a participant is eligible to apply for a cost award where, among other things, the participant represents the direct interests of ratepayers, provided that the focus is in relation to regulated services. Based on NOACC's letter, although NOACC may be in a position to speak to the business interests of ratepayers in Northwestern Ontario, it does not appear to the Board that NOACC's participation in this consultation is to primarily represent the direct interests of ratepayers *in relation to regulated services*. Based on NOACC's letter, for the same reasons as those given above in respect of NOMA the Board also does not believe that NOACC represents a public interest relevant to the Board's mandate in relation to the specific scope of this consultation. The Board therefore finds that NOACC is not eligible for an award of costs in this consultation.

Representatives of residential consumers (CCC and VECC) and of large users (AMPCO) have been determined to be eligible for an award of costs in this consultation, and the Board is interested in the unique perspective that might be offered by small commercial or business consumers. If NOACC is in a position to participate in this consultation for the purposes of representing this class of consumers in their capacity as ratepayers (i.e., "in relation to regulated services"), the Board would be prepared to consider a further request for cost award eligibility on that basis.

The Board's April 1, 2011 letter indicated that cost awards will be available to eligible persons, initially in relation to their participation in the stakeholder meeting scheduled

for May 12, 2011 to a maximum of actual meeting time plus 50% of meeting time for preparation and reporting. The Board notes that certain participants have indicated in their cost award eligibility requests that more than one person will or may attend the stakeholder meeting on their behalf. The Board takes this opportunity to confirm that, except where expressly noted otherwise, cost awards are available on a "per eligible participant" (i.e., per association) basis. The Board also reminds participants that it expects that they will utilize professional service providers in a responsible and judicious manner, that senior professionals will provide services on a cost-effective basis and that, where numerous professionals are engaged by a participant, their aggregate claim will not be materially higher than for other participants.

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

ISSUED at Toronto, May 4, 2011
ONTARIO ENERGY BOARD

Karen Taylor
Presiding Member

Paula Conboy
Member

Costs

30. (1) The Board may order a person to pay all or part of a person's costs of participating in a proceeding before the Board, a notice and comment process under section 45 or 70.2 or any other consultation process initiated by the Board. 2004, c. 23, Sched. B, s. 8.

Same

- (2) The Board may make an interim or final order that provides,
- (a) by whom and to whom any costs are to be paid;
 - (b) the amount of any costs to be paid or by whom any costs are to be assessed and allowed; and
 - (c) when any costs are to be paid. 2003, c. 3, s. 25 (1).

Rules

(3) The rules governing practice and procedure that are made under section 25.1 of the *Statutory Powers Procedure Act* may prescribe a scale under which costs shall be assessed. 2003, c. 3, s. 25 (1).

Inclusion of Board costs

(4) The costs may include the costs of the Board, regard being had to the time and expenses of the Board. 1998, c. 15, Sched. B, s. 30 (4).

Considerations not limited

(5) In awarding costs, the Board is not limited to the considerations that govern awards of costs in any court. 1998, c. 15, Sched. B, s. 30 (5).

Application

(6) This section applies despite section 17.1 of the *Statutory Powers Procedure Act*. 2003, c. 3, s. 25 (2).

“Secretary” means the Board Secretary and any Assistant Board Secretary;

“Tariff” means the Cost Award Tariff contained in Appendix A to this Practice Direction on Cost Awards;

“transmitter” means a person who owns or operates a transmission system; and

“wholesaler” means a person who purchases electricity or ancillary services in the IESO-administered markets or directly from a generator or who sells electricity or ancillary services through the IESO-administered markets or directly to another person, other than a consumer.

2. COST POWERS

2.01 The Board may order any one or all of the following:

- (a) by whom and to whom any costs are to be paid;
- (b) the amount of any costs to be paid or by whom any costs are to be assessed and allowed;
- (c) when any costs are to be paid;
- (d) costs against a party where the intervention is, in the opinion of the Board, frivolous or vexatious; and
- (e) the costs of the Board to be paid by a party or parties.

3. COST ELIGIBILITY

3.01 The Board may determine whether a party is eligible or ineligible for a cost award.

3.02 The burden of establishing eligibility for a cost award is on the party applying for a cost award.

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.

3.04 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.

3.05 Despite section 3.03, the following parties are not eligible for a cost award:

- (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.

- 3.06 Notwithstanding section 3.05, a party which falls into one of the categories listed in section 3.05 may be eligible for a cost award if it is a customer of the applicant.
- 3.07 Also 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.
- 3.08 The Board may, in appropriate circumstances, award an honorarium recognizing individual efforts in preparing and presenting an intervention or submission. The amount of the honorarium will be specified by the Board panel presiding.

4. COST ELIGIBILITY PROCESS

- 4.01 A party that will be requesting costs must submit its reasons as to why the party believes that it is eligible for an award of costs, addressing the Board's cost eligibility criteria (see section 3), at the time of filing of its notice of intervention or, in the case of a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, at a date specified by the Board. For information on filing and serving a request for intervention, refer to the Board's Rules of Practice and Procedure.
- 4.02 An applicant in a process will have 14 calendar days from the filing of the notice of intervention and request for cost eligibility to submit its objections to the Board, after which time the Board will rule on the intervention and request for eligibility.
- 4.03 The Board may at any time seek further information and clarification from any party that has filed a request for cost eligibility and may provide direction to such parties as to any matter that the Board may consider in determining the amount of a cost award, and, in particular, combining interventions and avoiding duplication of evidence.
- 4.04 A direction mentioned in section 4.03 may be taken into account in determining the amount of a cost award under section 5.01.

5. PRINCIPLES IN AWARDING COSTS

- 5.01 In determining the amount of a cost award to a party, the Board may consider, amongst other things, whether the party:
- (a) participated responsibly in the process;
 - (b) asked questions on cross examination which were unduly repetitive of questions already asked by other parties;
 - (c) made reasonable efforts to ensure that its evidence was not unduly repetitive of evidence presented by other parties;
 - (d) made reasonable efforts to co-operate with other parties in order to reduce the duplication of evidence and questions on cross-examination;
 - (e) made reasonable efforts to combine its intervention with that of similarly interested

ONTARIO ENERGY BOARD

Rules of Practice and Procedure (Revised November 16, 2006 and July 14, 2008)

or

- (c) order the party to pay costs.

- 5.02 Where a party fails to comply with a time period for filing evidence or other material, the Board may, in addition to its powers set out in **Rule 5.01**, decide to disregard the evidence or other material that was filed late.
- 5.03 No proceeding is invalid by reason alone of an irregularity in form.

6. Computation of Time

- 6.01 In the computation of time under these Rules or an order:
 - (a) where there is reference to a number of days between two events, the days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens; and
 - (b) where the time for doing an act under these Rules expires on a holiday, as defined under **Rule 6.02**, the act may be done on the next day that is not a holiday.
- 6.02 A holiday means a Saturday, Sunday, statutory holiday, and any day that the Board's offices are closed.

7. Extending or Abridging Time

- 7.01 The Board may on its own motion or upon a motion by a party extend or abridge a time limit directed by these Rules, *Practice Directions* or by the Board, on such conditions the Board considers appropriate.
- 7.02 The Board may exercise its discretion under this Rule before or after the expiration of a time limit, with or without a hearing.
- 7.03 Where a party cannot meet a time limit directed by the Rules, *Practice Directions* or the Board, the party shall notify the Board Secretary as soon as possible before the time limit has expired.

ONTARIO ENERGY BOARD

Rules of Practice and Procedure (Revised November 16, 2006 and July 14, 2008)

8. Motions

- 8.01 Unless the Board directs otherwise, any party requiring a decision or order of the Board on any matter arising during a proceeding shall do so by serving and filing a notice of motion.
- 8.02 The notice of motion and any supporting documents shall be filed and served within such a time period as the Board shall direct.
- 8.03 Unless the Board directs otherwise, a party who wishes to respond to the notice of motion shall file and serve, at least two calendar days prior to the motion's hearing date, a written response, an indication of any oral evidence the party seeks to present, and any evidence the party relies on, in appropriate affidavit form.
- 8.04 The Board, in hearing a motion, may permit oral or other evidence in addition to the supporting documents accompanying the notice, response or reply.

PART II - DOCUMENTS, FILING, SERVICE

9. Filing and Service of Documents

- 9.01 All documents filed with the Board shall be directed to the Board Secretary. Documents, including applications and notices of appeal, shall be filed in such quantity and in such manner as may be specified by the Board.
- 9.02 Any person wishing to access the public record of any proceeding may make arrangements to do so with the Board Secretary.

10. Confidential Filings

- 10.01 A party may request that all or any part of a document, including a response to an interrogatory, be held in confidence by the Board.
- 10.02 Any request for confidentiality made under **Rule 10.01** shall be made in accordance with the *Practice Directions*.
- 10.03 A party may object to a request for confidentiality by filing and serving an objection in accordance with the *Practice Directions* and within the time specified by the Board.

ONTARIO ENERGY BOARD

30

Rules of Practice and Procedure (Revised November 16, 2006 and July 14, 2008)

written submission or written evidence to provide it in the other language if the Board considers it necessary for the fair disposition of the matter.

40. Media Coverage

- 40.01 Radio and television recording of an oral or electronic hearing which is open to the public may be permitted on conditions the Board considers appropriate, and as directed by the Board.
- 40.02 The Board may refuse to permit the recording of all or any part of an oral or electronic hearing if, in the opinion of the Board, such coverage would inhibit specific witnesses or disrupt the proceeding in any way.

PART VI - COSTS

41. Cost Eligibility and Awards

- 41.01 Any person may apply to the Board for eligibility to receive cost awards in Board proceedings in accordance with the *Practice Directions*.
- 41.02 Any person in a proceeding whom the Board has determined to be eligible for cost awards under **Rule 41.01** may apply for costs in the proceeding in accordance with the *Practice Directions*.

PART VII - REVIEW

42. Request

- 42.01 Subject to **Rule 42.02**, any person may bring a motion requesting the Board to review all or part of a final order or decision, and to vary, suspend or cancel the order or decision.
- 42.02 A person who was not a party to the proceeding must first obtain the leave of the Board by way of a motion before it may bring a motion under **Rule 42.01**.
- 42.03 The notice of motion for a motion under **Rule 42.01** shall include the information required under **Rule 44**, and shall be filed and served within 20 calendar days of the date of the order or decision.

ONTARIO ENERGY BOARD

31

Rules of Practice and Procedure (Revised November 16, 2006 and July 14, 2008)

- 42.04 Subject to **Rule 42.05**, a motion brought under **Rule 42.01** may also include a request to stay the order or decision pending the determination of the motion.
- 42.05 For greater certainty, a request to stay shall not be made where a stay is precluded by statute.
- 42.06 In respect of a request to stay made in accordance with **Rule 42.04**, the Board may order that the implementation of the order or decision be delayed, on conditions as it considers appropriate.

43. Board Powers

- 43.01 The Board may at any time indicate its intention to review all or part of any order or decision and may confirm, vary, suspend or cancel the order or decision by serving a letter on all parties to the proceeding.
- 43.02 The Board may at any time, without notice or a hearing of any kind, correct a typographical error, error of calculation or similar error made in its orders or decisions.

44. Motion to Review

- 44.01 Every notice of a motion made under **Rule 42.01**, in addition to the requirements under **Rule 8.02**, shall:
- (a) set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:
 - (i) error in fact;
 - (ii) change in circumstances;
 - (iii) new facts that have arisen;
 - (iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time; and
 - (b) if required, and subject to **Rule 42**, request a stay of the implementation of the order or decision or any part pending the determination of the motion.

ONTARIO ENERGY BOARD

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 a regulatory framework for regional planning by electricity transmitters and electricity distributors.

**THE TOWN OF ATIKOKAN
MOTION RECORD**

**FOR REVIEW OF BOARD DECISION ON COST
AWARDS ISSUED MAY 4, 2011**

Filed May 24, 2011

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