

**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.

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**MOTION RECORD**

**NORTHWESTERN ONTARIO MUNICIPAL ASSOCIATION (NOMA)**

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

**Filed May 24, 2011**

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2. Affidavit of Jennifer Kingston dated May 24, 2011, with attached correspondence from NOMA dated May 24, 2011 (Schedule "A" pages 7 to 15);
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 16 to 21);
4. Letter from NOMA dated April 13, 2011 to the Ontario Energy Board indicating NOMA's intent to attend the stakeholder sessions and request costs eligibility (Schedule "C" pages 22 to 27);
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 28 to 32);
6. Section 30 of the *Ontario Energy Board Act, 1998* (Schedule "E" page 33);
7. Section 3 of the Board's Practise Direction on Cost Awards (Schedule "F" pages 34 and 35);
8. Rule 7, 8, 41, 42, and 44 of the Board's Rules of Practise and Procedure (Schedule "G" pages 36 to 39); and
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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.

### **NOTICE OF MOTION**

**THE INTERESTED PARTY, NORTHWESTERN ONTARIO MUNICIPAL ASSOCIATION** 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 25<sup>th</sup> floor of 2300 Yonge St., Toronto, Ontario M4P 1E4.

**PROPOSED METHOD OF HEARING, NORTHWESTERN ONTARIO MUNICIPAL ASSOCIATION** 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) NOMA primarily represents the direct interest of ratepayers in relation to regulated services.
  - (b) NOMA is eligible for a cost award in this proceeding.
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 based on NOMA's April 13, 2011 letter, it 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.
4. NOMA by motion respectfully requests that the Board review and vary parts of the Decision on Cost Eligibility and exercise its discretion to order that NOMA is eligible for costs in this proceeding.

### Threshold Issue

5. NOMA relies on Rule 44.01 (a) (i) as its grounds for this motion. NOMA submits the Board made an error in fact by concluding that NOMA does not primarily represent the direct interests of consumer (ratepayers) in relation to regulated services.
6. Without considering this fact in its discretion to refuse cost eligibility to NOMA it raises a question as to the correctness of the Board's Decision on Cost Eligibility.
7. Alternatively, NOMA 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 NOMA dated April 13, 2011 to the Ontario Energy Board.

## Detailed Grounds

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8. In the NOMA April 13, 2011 letter to the Board it advised on page 2, points 2 and 3 the following facts:

"NOMA has a substantial interest in this consultation proceeding because:

2. understands and can speak to the *direct interest of the ratepayers in the Northwest Region* (population approximately 250,000)."

3. through the Energy Task Force (ETF: formerly a sub-committee of NOMA) NOMA has created a regional research committee of interested and experienced individuals who by living and working in the northwest are keenly aware of the geographical and *technical issues relating to electricity generation and transmission/distribution in the region.*" (Italics ours)

9. While not using the words "regulated service", NOMA's interpretation of its April 13, 2011 letter is that it did advise the Board that it primarily represents the direct interests of ratepayers in relation to regulated services. The phrase used, "technical issues relating to electricity generation and transmission/distribution", includes, in NOMA's opinion and interpretation regulated services. NOMA therefore submits that it did inform the Board that it represents the direct interest of 250,000 ratepayers primarily with respect to regulated services.

10. NOMA submits that the term "regulated services" is not a defined term, or defined in these proceedings. Use of the words "technical issues relating to electricity generation and transmission/distribution" can reasonably be interpreted as dealing with or related to "regulated services" and Board Code's. Support for this conclusion is found in the "Meeting Agenda" for EB-2011-0043. The Board states:

**"Please note:** This consultation is narrowly focused on processes for developing *technical* solutions..." (Italics ours).

11. In misinterpreting NOMA's use of the word "technical issues" to exclude "regulated service" is in essence the error in fact that NOMA submits the Board made in its decision to exclude NOMA from costs eligibility.

12. NOMA submits the fact it primarily represents the direct interests of the consumer (ratepayers) in relation to regulated services is found in the public record. Along with being an Intervenor in the first IPSP Application before the OEB (EB-2007-0101), NOMA has provided comment to the Province on the Proposed Growth Plan for Northern Ontario and identified the need for

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planned investments in the transmission network in Northwestern Ontario. Projects such as the Little Jackfish Generation and East of Nipigon to Pickle Lake Transmission Projects have received special attention from NOMA. NOMA also provided detailed comment to the Ministry of Energy on the draft Supply Mix Directive posted on the Environmental Registry. NOMA has also met with the Ministry of Energy on several occasions over the past three years to advocate on behalf of the ratepayers it represents, including issues dealing with regulated services.

13. The membership of NOMA includes 37 local governments in the northwest. Four of their 37 members, the City of Thunder Bay, the City of Kenora, Town of Fort Frances and the Town of Atikokan, are effective owners of a distributor of electricity, either individually or a group. With less than 10 percent of its membership effective owners of a distributor of electricity it cannot be reasonably concluded that NOMA is an association that consists predominantly of commercial service providers.

14. NOMA 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 NOMA 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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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](mailto: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.

**NORTHWESTERN ONTARIO MUNICIPAL  
ASSOCIATION (NOMA)**

**NOTICE OF MOTION**

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

**Filed May 24, 2011**

WEILER, MALONEY, NELSON  
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**ONTARIO ENERGY BOARD**

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

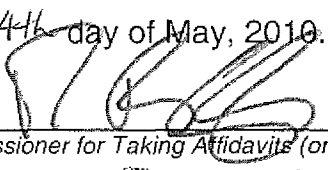
**AND IN THE MATTER OF** cost award eligibility for interested parties in a consultation process to develop a regulatory framework for regional planning by electricity transmitters and electricity distributors.

**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:**

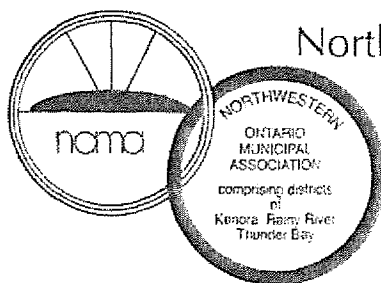
1. I am a Legal Assistant with the law firm Weiler, Maloney, Nelson, counsel for the Northwestern Ontario Municipal Association (NOMA), an interested party in a consultation process to develop a regulatory framework for regional planning by electricity transmitters and electricity distributors.
2. Attached to this my Affidavit is a true copy of correspondence dated May 24, 2011 from NOMA 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**



## Northwestern Ontario Municipal Association

Kenora, Rainy River and Thunder Bay Districts

P.O. Box 10308, Thunder Bay, ON P7B 6T8

Phone/Fax (807) 683-6662

Website: [www.noma.on.ca](http://www.noma.on.ca)

E-mail: [admin@noma.on.ca](mailto:admin@noma.on.ca)

May 24, 2011

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](mailto:boardsec@ontarioenergyboard.ca)

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

On May 4, 2011, the Ontario Energy Board issued its Decision on Cost Eligibility and determined that Northwestern Ontario Municipal Association ("NOMA") was not eligible. The Board found that based on our April 13, 2011 letter, it did not believe that NOMA represents a public interest relevant to the Board's mandate in the context of the specific scope of this consultation. This letter is to provide the Board clarification of fact in support of the NOMA notice of motion to review the Board's Decision dated May 4, 2011. NOMA seeks the Board's indulgence to do so.

### **Specific to This Consultation**

#### **Background:**

The history, members, and purpose of NOMA are more fully described in Schedule "A".

#### **Objects:**

The objects of NOMA are:

- to consider matters of general interest to the Municipalities and to procure enactment of such legislation as may be of advantage to the Municipalities of Northwestern Ontario; and,
- to take united action on all matters where the rights of the Municipalities may be affected to advance the standards of Municipal Government through education and discussion and generally to promote their interests.

### Common Voice Northwest

In order to better carry out the purpose of NOMA we aligned with NOACC (the Northwestern Ontario Associated Chambers of Commerce) to form Common Voice North West (CVNW). The entire purpose of CVNW is to consolidate the message of unity in the Northwest region on behalf of the businesses and municipalities of the Northwest Region, all of whom are ratepayers and all of whom are profoundly interested in regulated services throughout the Region

### Energy Task Force:

NOMA as early as 2007 identified energy as a matter of interest to its members.

Following from NOMA's core value of being non-partisan and objective in how it presents itself, NOMA, through CVNW, helped create the Energy Task Force (ETF) (Please see Schedule "B": Energy Task Force).

### Legal Counsel in Common:

Also flowing from its commitment to one voice NOMA has joined with NOACC, City of Thunder Bay and Town of Atikokan in having representation by the same lawyers.

### Direct Knowledge of the Interests of Ratepayers in Regulated Services:

NOMA does in fact primarily represent the direct interest of its member ratepayers in relation to regulated services. In our April 13, 2011 letter to the Board we advised, not in those exact words, on page 2, point 2 and 3 this point:

"NOMA has a substantial interest in this consultation proceeding because:

1. understands and can speak to the *direct interest of the ratepayers in the Northwest Region (population approximately 250,000).*"
2. through the Energy Task Force has created a regional research committee of interested and experienced individuals who through living and working in the northwest are keenly aware of the geographical and *technical issues relating to electricity generation and transmission/distribution in the region.*" (Italics ours)

Apportioning the costs between transmitters, distributors, loads and generation when projects involve multiple connections and service areas directly impacts NOMA member ratepayers. The process for developing technical solutions and regulatory rules for determining cost responsibility when localized delivery issue involves a transmitter and one or more distribution service areas is of direct interest of NOMA member ratepayers.

### Other Efforts on Electricity Matters

- Along with being an Intervenor in the first IPSP Application before the OEB (EB-2007-0101), NOMA has provided comment to the Province on the Proposed Growth Plan for Northern Ontario and identified the need for planned investments in the transmission network in Northwestern Ontario. Projects such as the Little Jackfish Generation and East of Nipigon to Pickle Lake Transmission Projects have received special attention from NOMA.
- NOMA also provided detailed comment to the Ministry of Energy on the draft Supply Mix Directive posted on the Environmental Registry.
- NOMA has also met with the Ministry of Energy either in Thunder Bay or at the annual AMO or OGRA conferences over the past three years and has stressed these same issues with him.
- Another example of NOMA advocacy on electricity transmission public policy is demonstrated by the resolution on "Ontario's Energy Transmission Plans" adopted by NOMA at its 2010 Annual General Meeting (Please see Schedule "C": Resolution on Ontario's Energy Transmission Plans)

More background information on NOMA and its efforts on energy matters can be found on our public website: <http://www.noma.on.ca/>

NOMA hopes to be 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.

Sincerely,



Ron Nelson  
President  
/cr

## Schedule "A" to Letter from NOMA

### History, Members, and Purpose

#### History and Members

The Northwestern Ontario Municipal Association (NOMA) was organized in 1946, incorporated on September 18th 2001, and is made up of four components:

- the Kenora District Municipal Association,
- the Rainy River District Municipal Association,
- the Thunder Bay District Municipal League, and
- the City of Thunder Bay.

The Kenora District Municipal Association represents the following municipalities:

- City of Dryden
- City of Kenora
- Municipality of Machin
- Municipality of Red Lake
- Municipality of Sioux Lookout
- Township of Ear Falls
- Township of Ignace
- Township of Pickle Lake
- Township of Sioux Narrows-Nestor Falls

The Rainy River District Municipal Association represents the following municipalities:

- Alberton
- Atikokan
- Chapple
- Dawson
- Emo
- Fort Frances
- Lake of the Woods
- La Vallee
- Morley
- Rainy River

The Thunder Bay District Municipal League represents the following municipalities:

- Conmee
- Dorion
- Gillies
- Greenstone
- Hornepayne
- Manitouwadge
- Marathon
- Neebing
- Nipigon
- O'Connor
- Oliver Paipoonge
- Red Rock
- Schreiber
- Shuniah
- Terrace Bay
- Wawa
- White River

Five of our 37 members, the City of Thunder Bay, the City of Kenora, the Town of Fort Frances, the Municipality of Sioux Lookout and the Town of Atikokan, are effective owners of a distributor of electricity, either individually or as a group.

#### Purpose

NOMA is the recognized advocate for local government in Northwestern Ontario. Its purpose is to provide leadership in advocating regional interests to all orders of government and other organizations, including the Ontario Energy Board. NOMA seeks to be the essential voice, to be heard by all orders of government, to create a vibrant, growing and prosperous region while maintaining our valued Northwestern Ontario lifestyle.



## Schedule "B" to Letter from NOMA

### The Energy Task Force

The ETF is an unincorporated association that conducts a cyber-forum comprised of volunteers interested in energy issues throughout the Northwest Region.

The ETF, since its inception over four (4) years ago under the auspices of Common Voice North West (CVNW), has conducted research by its own volunteer members (and, in one instance during the last iteration of the IPSP, as an Intervenor through a funded consultant) related to the reliability of the power system throughout the Northwest Region. More specifically the ETF analyses and gives advice of its volunteers to NOMA on the reliability of regulated services in the Northwest Region, including but not limited to:

- the adequacy, security and dynamic and harmony of power supply available (or not) in the Northwest Region, as well as
- the status, capacity (and lack of capacity) of the generators, transmission and distribution stations and the radial circuits of the Hydro One grid in the Northwest Region.

**Schedule "C" to Letter from NOMA**

Resolution on Ontario's Energy Transmission Plans  
Adopted by the Board of Directors, November 2010

**Whereas** the production, transmission and distribution of electricity is a key part of the Northwestern Ontario economy, and

**Whereas** NOMA, Atikokan and the City of Thunder Bay have been interveners before the Ontario Energy Board on the matter of transmission plans for Northwestern Ontario, and

**Whereas** Hydro One Networks, on a request from the Ontario Minister of Energy has developed a plan for the upgrading and linking of transmission facilities in the Northwest, and

**Whereas** these same plans are referenced in the draft of the Grow North Plan,

**Therefore be it resolved** that NOMA endorse the East of Nipigon to Pickle Lake line as outlined in the Northern Ontario Growth Plan conditional on the following:

1. The Little Jackfish hydro-electric project being approved and constructed, and
2. that the plan be modified to provide, at Hydro One Network's expense, a transmission station or stations, designed to provide service to the Communities of Whitesand First Nation, Armstrong and Gull Bay First Nation, and
3. that the station be designed to provide sufficient power to upgrade the existing line from Beardmore to Longlac and Nakina and to power the future line to the Ring of Fire, and

**Further be it resolved** that the Pickle Lake to Ear Falls line be upgraded and a new line connecting Ignace to Pickle Lake be constructed within the next ten years, as per the assessment by Hydro One Networks, and that the proposed construction of the Thunder Bay-Kenora and Nipigon-Wawa lines proceed as outlined in the Hydro One Network Plan.

**Therefore, Be It Resolved** that NOMA request the Honourable Brad Duguid, Minister of Energy for the Province of Ontario to issue the following directives:

- (i) To Hydro One, directing it to complete in a timely fashion the Environmental

Assessment for the proposed Nipigon to Little Jackfish Transmission Line, (also known as the southern portion of the North-West Transmission Expansion Project), in order to ensure that delay in transmission does not impede the planned schedule for the development of the Little Jackfish Generation Project and other green energy projects within the region;

(ii) To Hydro One, directing it to upgrade the existing transmission corridor infrastructure from the 3 OPG electricity stations on the Nipigon River to Greenstone in order to provide the electricity required for the development of the Ring of Fire initiatives; and

(iii) To the Ontario Power Authority, directing it to proceed with the development of a revenue arrangement with the proposed Little Jackfish Power Limited Partnership between Waaskiinaysay Ziibi Inc. and Ontario Power Generation in order to maintain the schedule for the development of the Little Jackfish Generation Project; and,

**Further be it resolved** that NOMA work with like minded organizations to continue to advocate for the approval and construction of both the transmission line and the hydraulic generation facilities, and

**Further be it resolved** that a copy of this resolution be sent to the following with a request that they work to ensure that all necessary steps required to implement this resolution are taken”.



Ontario Energy  
Board  
P.O. Box 2319  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416-481-1967  
Facsimile: 416-440-7656  
Toll free: 1-888-632-6273

Commission de l'énergie  
de l'Ontario  
C.P. 2319  
27<sup>e</sup> étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone: 416-481-1967  
Télécopieur: 416-440-7656  
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**

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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 comments<sup>1</sup> 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**

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<sup>1</sup> 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](http://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](http://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](mailto: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](mailto: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

## 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.

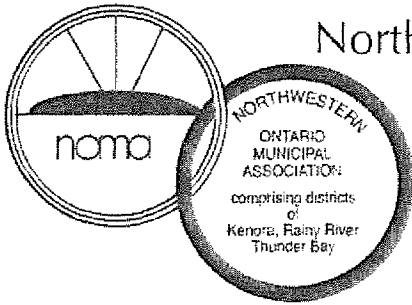
The Board anticipates that other activities associated with this consultation, such as the provision of written comments on the Board staff Discussion Paper, will also be eligible for cost awards. Further details will be provided at the relevant time.

## 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](http://www.ontarioenergyboard.ca) on the "Rules, Guidelines and Forms" webpage.





# Northwestern Ontario Municipal Association

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Kenora, Rainy River and Thunder Bay Districts

P.O. Box 10308, Thunder Bay, ON P7B 6T8

Phone/Fax (807) 683-6662

Website: [www.noma.on.ca](http://www.noma.on.ca)

E-mail: [admin@noma.on.ca](mailto:admin@noma.on.ca)

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 Northwestern Ontario Municipal Association  
(NOMA)**

**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), Northwestern Ontario Municipal Association is requesting recognition as an Interested Party.

**Background of Northwestern Ontario Municipal Association**

The Northwestern Ontario Municipal Association (NOMA) represents the interests of all the municipalities from Kenora and Rainy River in the west to Hornepayne and Wawa in the east. It provides leadership in advocating regional interests to all orders of government and other organizations.

NOMA and the Northwestern Ontario Associated Chambers of Commerce (NOACC) have led the creation of a formal coalition of interested organizations to advise them on issues related to Northwestern Ontario. That coalition is known as Common Voice Northwest (CVNW). In turn, Common Voice Northwest has absorbed a NOMA created subcommittee, the Energy Task Force (ETF), as a

research facility with a specific mandate to investigate and make recommendations on issues related to energy issues in the Northwest Region advising NOMA, NOACC, the Township of Atikokan and the City of Thunder Bay on energy issues.

### **NOMA's Substantial Interest**

NOMA intends to build on its participation in CVNW's recent submissions on the draft Supply Mix Directive and on NOMA's earlier participation in the Board's review of the Integrated Power System Plan (EB-2007-0707). NOMA has a substantial interest in this consultation proceeding because:

1. NOMA represents the municipal communities throughout the Northwest Region;
2. understands and can speak to the direct interests of the ratepayers in the Northwest Region (population approximately 250,000); and
3. through the Energy Task Force (ETF: formerly a sub-committee of NOMA) NOMA has created a regional research committee of interested and experienced individuals who by living and working in the northwest are keenly aware of the geographical and technical issues relating to electricity generation and transmission/distributions in the region.

NOMA 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

NOMA intends to join with other Interested Parties in the Northwest Region, namely:

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

NOMA, NOACC, the Township of Atikokan and the City of Thunder Bay have agreed among themselves to co-operate and have, therefore, authorized Weiler, Maloney, Nelson, who are counsel, in this instance, for the City of Thunder Bay, to make submissions in the common interests of all of them.

In addition, NOMA and the Nishnawbe-Aski Nation (NAN) are active in seeking out areas where they have similar interests. Weiler, Maloney, Nelson, on the one hand, as counsel in this instance for the City of Thunder Bay and designated spokespersons for NOMA and Douglas Cunningham, on the other hand, counsel for Nishnawbe-Aski Nation co-operated with one another in the EB-2007-0707 hearings on the IPSP and propose to continue the sharing of information and aligning strategies for submissions that are complementary to one another in the consultation now being undertaken by the Board.

#### **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 the purposes of speaking on behalf of NOMA and informing NOMA as to the proceedings.

#### **Cost Awards**

NOMA will seek designation as a person, under Section 30 of the *Ontario Energy Board Act, 1998*, eligible to receive costs. The basis for the designation would be the representative nature of NOMA throughout the Northwest Region.

NOMA in particular represents the direct interest of ratepayers throughout the Northwest Region. Those ratepayers are often dependent for their livelihood on a single industrial employer in a town, and now depend also on the robust mineral exploration programs in the Northwest Region. The development of adequate electricity system reliability in the Northwest Region is essential for the viability of those industrial plants, for advanced mineral exploration, and certainly for the construction and operation of any mine that reaches production. 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.

NOMA represents a public interest in seeking to ensure the reliability and security of electricity supply for both the ratepayers in the Northwest Region and the industries that employ them.

**For Purposes of Notice, the President and Executive Director of the Northwestern Ontario Municipal Association:**

Ron Nelson, President  
[president@noma.on.ca](mailto:president@noma.on.ca)

P.O. Box 10308  
Thunder Bay, ON P7B 6T8

**and**

Charla Robinson, Executive Director  
[admin@noma.on.ca](mailto:admin@noma.on.ca)

P.O. Box 10308  
Thunder Bay, ON P7B 6T8

Phone: (807) 683-6662

**Spokespersons for NOMA:**

- 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);  
[jcyr@wmnlaw.com](mailto:jcyr@wmnlaw.com)  
807 625 8880
- Nicola A. Melchiorre, Partner in the firm of Weiler, Maloney, Nelson (called to the Bar in 2004, licenced by the Law Society of Upper Canada to practice law in Ontario).  
[nmelchio@mnlaw.com](mailto:nmelchio@mnlaw.com)  
807 625 8883



The regular mail and courier contact information of the law firm of Weiler, Maloney, Nelson is:

1001 William Street

Thunder Bay, ON

- P7B 6M1

**Consultant to NOMA :**

- Michael D. McLeod,  
McLeod & Associates,  
1000 – 120 Eglinton Ave., E.  
Toronto, ON

Please contact the undersigned should further information or clarification be required.

Respectfully submitted,

Yours very truly,

A handwritten signature in black ink, appearing to be 'RN' with a stylized flourish extending to the right.

Ron Nelson  
President  
/cr





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.<sup>1</sup> 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

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<sup>1</sup> 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**

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Karen Taylor  
Presiding Member

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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.

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## 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

### 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

### 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.





## MEETING AGENDA

The objective of this meeting is to allow stakeholders to air their views on:

- problem identification for planning with multiple utilities; and
- any barriers to optimized solutions in Board codes.

### Regional Planning: Cost Responsibility For Optimized Solutions (EB-2011-0043)

**Date:** Thursday, May 12, 2011

**Location:** Ontario Energy Board

**Time:** 9:30 a.m. – 12:30 p.m.

2300 Yonge Street  
25<sup>th</sup> Floor, ADR Room

**Please note:** This consultation is narrowly focused on processes for developing technical solutions and regulatory rules for determining cost responsibility when a localized delivery issue involves a transmitter and one or more distribution service areas. It is not a broad planning exercise, nor a discussion of general regional issues.

9:30 – 9:45	<b>Welcome</b> Objectives for the project and the meeting
9:45 – 10:45	<b>Status Check with Utilities</b> Participants should come prepared to discuss the current status of planning across service areas. <ul style="list-style-type: none"> <li>• What is working in the current framework?</li> <li>• Where is there a need for improvement (e.g. identify barriers)?</li> </ul>
10:45 – 11:00	<b>Break</b>
11:00 – 12:00	<b>Breakout Sessions</b> Participants should consider which session they will attend and prepare to actively participate in discussions. <ul style="list-style-type: none"> <li><b>A) Planning Communications</b> When a capacity issue is identified, who talks to whom and when?</li> <li><b>B) Cost Responsibility</b> What problems have been encountered in apportioning costs between transmitters, distributors, loads and generators when projects involve multiple connections and service areas?</li> </ul>
12:00 – 12:30	<b>Session Presentations and Wrap Up</b>

#### Ground Rules for the Meeting

1. Keep to the times in the agenda.
2. Put cell phones on vibrate.
3. Be prepared to participate.
4. Be prepared to listen to others' views.

**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.

**NORTHWESTERN ONTARIO MUNICIPAL  
ASSOCIATION (NOMA)**

**MOTION RECORD**

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

**Filed May 24, 2011**

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