

December 8, 2011

RESS & COURIER

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Attention: Ms. K. Walli, Board Secretary

Jonathan Myers
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Dear Sirs/Mesdames:

Re: Submissions re Intervenor Status and Cost Eligibility of the Ontario Waterpower Association - Renewed Regulatory Framework for Electricity Distributors and Transmitters (EB-2010-0377, EB-2010-0378, EB-2010-0379, EB-2011-0004 and EB-2011-0043)

We are counsel to the Ontario Waterpower Association (the "OWA") with respect to certain of the above-referenced proceedings, which are being considered by the Board as part of its coordinated consultation process to develop a renewed regulatory framework for electricity distributors and transmitters ("RRFE"). These submissions are in response to the Board's Decision on Cost Eligibility in the RRFE proceeding, dated December 2, 2011 (the "Cost Eligibility Decision").

Background

On November 28, 2011 the OWA filed a late intervenor status and cost eligibility request with respect to three proceedings that are being considered as part of the RRFE process, namely:

- Approaches to Mitigation for Electricity Transmitters and Distributors (EB-2010-0378);
- Defining and Measuring the Performance of Electricity Transmitters and Distributors (EB-2010-0379); and
- Regulatory Framework for Regional Planning for Electricity Infrastructure (EB-2011-0043).

In its request, the OWA indicated that consideration of these policy frameworks may have significant implications for the waterpower sector in Ontario.

In its Cost Eligibility Decision, the Board noted that there may be interrelationships between the OWA and the Association of Power Producers of Ontario ("APPrO"), the Ontario Sustainable Energy Association ("OSEA") and the Agrienergy Producers' Association of Ontario ("APAO"). The Board invited the OWA to explain why its interests, representing customers of electric

utilities, cannot be incorporated into or are distinct from the positions put forth by APPrO and/or OSEA in relation to each of the three initiatives for which the OWA seeks cost eligibility. The Board also sought explanation as to how the OWA would seek to minimize duplication and overlap with these other organizations.

Interrelationships between OWA and the Other Organizations

While each of the OWA, APPrO, APAO and OSEA represent members that include electricity generators, there are significant differences in the interests and memberships of these organizations.

The OWA was established in 2001 to represent the common and collective interests of the waterpower industry. Today, the OWA represents over 150 organizations. Its membership includes generators, engineering firms, environmental consultants, legal, project financing and insurance firms, Aboriginal communities and other organizations, all of whom share a common interest in advancing waterpower in Ontario. With respect to generation in particular, approximately one third of the OWA's members are generators, which provide approximately 99% of Ontario's waterpower generating capacity. Moreover, waterpower generation has a number of characteristics that make it unique from other types of electricity generation, including that it provides both base load and peak load generation, there is a wide geographic distribution of existing and planned facilities, unique levels of asset durability and reliability, as well as the contribution of system operation benefits such as voltage regulation, operational reserve and black start capability.

The OWA currently has reciprocal membership arrangements with APPrO and the APAO, such that the OWA and each of these organizations are "associate" members of one another. Such membership status does not confer voting status. The OWA does not currently have such a relationship with OSEA.

It is the OWA's understanding that APPrO represents companies that are involved in the generation of electricity in Ontario, including generators and suppliers of services, equipment and consulting services related to electricity generation from co-generation, hydroelectric, gas, coal, nuclear, wind, waste wood and other sources. While there is some overlap between the OWA's membership and APPrO's membership, it is important to recognize that the majority of OWA members are not members of APPrO and, similarly, the majority of APPrO members are not members of OWA. Moreover, in representing the power generation sector broadly, it is our expectation that APPrO would be primarily focused on issues that are common across all or most types of electricity generation. While the OWA values its relationship with APPrO, the interests and the positions APPrO would be expected to put forward would likely be limited to areas where there is consensus among all types of generators represented by APPrO while the OWA's contributions would be restricted to matters specific to waterpower. Consequently, issues and concerns that are unique to waterpower generators may not get the level of attention or consideration through APPrO that the OWA and its members believe those issues and concerns deserve.

It is the OWA's understanding that the APAO represents the specific interests of members that are interested in the development of biogas, including agricultural biogas. Aside from the reciprocal associate memberships between the OWA and the APAO, we do not believe there is any notable overlap between the membership of these two organizations. Nevertheless, as representatives of generators, there may be some common interests as between the OWA and APAO.

It is the OWA's understanding that OSEA represents organizations and individuals, including private citizens, cooperatives, farmers, First Nations, businesses, institutions and municipalities who share an interest in renewable energy and community power projects. Based on OSEA's intervention request, we further understand that OSEA's membership includes six electricity generators with a combined in-service capacity of approximately 20 MW, the vast majority of which is from a single wind generator. It does not appear that any of OSEA's members are waterpower generators. We also note that, based on its intervention request letter, OSEA may represent the interests of ratepayers which comprise a significant portion of its membership. This is a significantly different constituency from the industry that is served by the OWA. Nevertheless, as representatives of generators, there may be some minor common interests as between the OWA and OSEA.

Incorporation of OWA Interests into Positions of Other Organizations

As indicated above, the overlap and potential for duplication as between the OWA and OSEA, and as between the OWA and the APAO is not significant. There is little or no overlap in the membership of these organizations and the interests of OSEA and APAO would not necessarily be aligned with those of the OWA in respect of the policy initiatives in which the OWA has sought to intervene. It would not be appropriate or effective for the OWA to rely on its views being incorporated into the positions put forward by either APAO or OSEA.

While there is a clear relationship between the OWA and APPrO and some overlap in membership, in our view for the following reasons it would not be sufficient for the OWA to rely on its views being incorporated into the positions put forth by APPrO.

First, we note that the OWA has requested intervenor status with respect to EB-2010-0378, EB-2010-0379 and EB-2011-0043 but that APPrO has only been granted intervenor status in respect of the latter two of these matters. As such, there would be no prospect for the OWA's positions to be incorporated into those of APPrO with respect to EB-2010-0378.

Second, we note the following statement from APPrO's January 7, 2011 intervenor request letter: "APPrO expects to be primarily engaged in the "Distribution network investment planning" component of the co-ordinated consultation initiative (EB-2010-0377) but may also become active in the component titled "Defining and measuring performance of electricity distributors and transmitters (EB-2010-0379)." As noted, the OWA has not sought intervenor status in EB-2010-0377, which is clearly intended to be APPrO's primary focus. Moreover, it is not even clear as to whether APPrO will necessarily become active in EB-2010-0379, it is merely a possibility. As such, there is little to no prospect for the OWA's positions to be incorporated into those of APPrO with respect to EB-2010-0379.

Minimizing Duplication and Overlap

The OWA is familiar with the principles applied by the Board in awarding costs. In particular, we understand the importance of being able to demonstrate, upon filing a cost claim, that the OWA has satisfied the criteria set out in Section 5.01 of the *Practice Direction on Cost Awards*. These criteria include, amongst other things, whether a party has made reasonable efforts to:

- (c) ensure its evidence is not unduly repetitive of evidence presented by other parties;
- (d) co-operate with other parties in order to reduce the duplication of evidence and questions on cross-examination; and
- (e) combine its intervention with the interventions of similarly interested parties.

Recognizing that there may be common interests and views among the OWA, APPrO, APAO and OSEA as intervenors that represent the interests of electricity generators, the OWA will endeavor to work with these other organizations to coordinate the preparation of evidence, comments and submissions where reasonably possible. This may be through conference calls or other communications intended to seek opportunities to avoid duplicative evidence and to reduce the duplication of interrogatories or cross-examination questions among these parties.

The OWA further recognizes that perhaps the best opportunities to minimize duplication and avoid overlap would arise as between the OWA and APPrO with respect to EB-2011-0043. Correspondingly, the OWA will make a targeted effort to coordinate and cooperate with APPrO in respect of this particular matter.

General Grounds for Cost Eligibility

The OWA submits that it should be eligible for costs. Although the OWA's membership includes electricity generators, these generators are consumers of electricity transmitters and distributors. The policies, rules, guidelines and procedures that may result from the RRFE process could have a material impact on the business conditions faced by generators, including waterpower generators, and on the transmission and distribution services provided by utilities to generators. As an association that represents the interests of the waterpower industry, it is also more efficient for the OWA to participate in the RRFE process than it would be for a number of its members to participate individually. Moreover, to the extent that the RRFE process raises issues that uniquely affect the interests of the waterpower industry, it will be important for the Board to have before it the appropriate stakeholder representation. The OWA does not have sufficient funding to allow for it to participate effectively in the RRFE process. Accordingly, the OWA submits that it should be granted cost eligibility.

Notices

The OWA requests that further communications with respect to this matter be sent to:

Intervenor
Ontario Waterpower Association
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380 Armour Road,
Peterborough, ON K9H 7L7

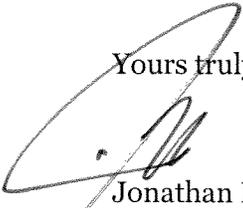
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Yours truly,



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