



EB-2010-0377
EB-2010-0378
EB-2010-0379
EB-2011-0004
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 coordinated consultation
process for the development of a renewed regulatory
framework for electricity distributors and transmitters.

BEFORE Paula Conboy
Presiding Member

Karen Taylor
Member

SUPPLEMENTAL DECISION ON COST ELIGIBILITY #3

February 1, 2012

The Board has underway a coordinated consultation process to develop a renewed regulatory framework for electricity distributors and transmitters ("RRFE").

The consultation encompasses five inter-related policy initiatives which support RRFE development:

- Distribution Network Investment Planning (EB-2010-0377);
- Regulatory Framework for Regional Planning for Electricity Infrastructure (EB-2011-0043);

- Establishment, Implementation and Promotion of a Smart Grid in Ontario (EB-2011-0004);
- Approaches to Mitigation for Electricity Transmitters and Distributors (EB-2010-0378); and,
- Defining and Measuring the Performance of Electricity Transmitters and Distributors (EB-2010-0379).

In earlier communications, the Board indicated that the costs to be awarded will be recovered from licensed rate-regulated electricity distributors and/or licensed rate-regulated electricity transmitters, as applicable depending on the initiative.

The Board, in various decisions on cost eligibility in this consultation, has previously considered cost award eligibility requests made by the six participants whose cost award eligibility status is being further addressed in this Decision. Table 1 below reflects the Board's earlier cost eligibility decisions for each of these participants, as well as the requests for cost eligibility that are addressed in this Decision as follows:

- i. the symbol "✓" denotes that the participant has already been determined by the Board to be eligible in respect of a particular initiative in previous Board decisions as part of this consultation;
- ii. requests for eligibility that are addressed in this Decision are denoted with an "**R**" or "**R_{Ex}**", where the "**R**" denotes that a request for eligibility has been made, and an "**R_{Ex}**" denotes that the participant is seeking eligibility to claim the costs of an expert; and
- iii. a blank space indicates that no request for cost eligibility has been received from the participant in respect of a particular initiative.

Table 1: Cost Eligibility by Initiative and Participant

Participant	EB-2010-0377	EB-2010-0378	EB-2010-0379	EB-2011-0043	EB-2011-0004
Agrienergy Producers' Association of Ontario (APAO)		R	R	R	
Canadian Manufacturers & Exporters (CME)	✓/ R_{Ex}	✓/ R_{Ex}	✓	✓	✓
Federation of Rental-housing Providers of Ontario (FRPO)	✓	✓	✓	R	R
Low-Income Energy Network (LIEN)	✓	✓	✓	R	R
Ontario Waterpower Association (OWA)		R	R	R	
Retail Council of Canada (RCC)	✓/ R_{Ex}	✓/ R_{Ex}	✓/ R_{Ex}	✓/ R_{Ex}	✓/ R_{Ex}

Cost Award Eligibility Requests by APAO and OWA

In its December 2, 2011 Decision on Cost Eligibility in this consultation (the “December Decision”)¹ the Board considered, in addition to other matters, requests for cost award eligibility from the Agrienergy Producers’ Association of Ontario (“APAO”) and the Ontario Waterpower Association (“OWA”). Specifically, the Board stated as follows:

Generators, either as a group or individually, are usually ineligible for a cost award under section 3.05 of the Practice Direction. However, in respect of similar cost award eligibility requests from [the Association of Power Producers of Ontario] and [the Ontario Sustainable Energy Association], the Board has found pursuant to section 3.07 of the Practice Direction that special circumstances exist that would allow cost eligibility...²

¹ December 2, 2011 Decision on Cost Eligibility (EB-2010-0377, EB-2010-0378, EB-2010-0379, EB-2011-0043, EB-2011-0004).

² December Decision, at page 10.

Noting that there may be interrelationships between the Association of Power Producers of Ontario (“APPrO”),³ the Ontario Sustainable Energy Association (“OSEA”),⁴ APAO and OWA, in the December Decision the Board invited APAO and OWA, by December 9, 2011, to explain why their respective interests as customers of electric utilities cannot be incorporated into or are distinct from the positions put forth by APPrO and/or OSEA.⁵ In response, the Board received letters from APAO and OWA, both dated December 8, 2011.

In its letter, APAO stated that it:

...represents the collective voice of the biogas industry from farmers, technology suppliers, financial and other institutions. No other group advocates on behalf of this technology and its specific issues.

Specifically, APAO noted that while APAO is a member of OSEA, OSEA focuses primarily on wind and solar technologies and relies on APAO to provide expertise on biogas. Similarly, while there may be some shared interests, APAO noted that OWA’s expertise lies in issues related to water power and not biogas. Further, APAO argued that its members’ voices would not likely be addressed by APPrO, given that APPrO’s members are larger generators than those represented by APAO.

APAO indicated it would coordinate with OSEA, OWA and APPrO as much as possible to minimize duplication throughout the consultation.

In its letter of December 8, 2011, OWA stated that:

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.

OWA notes that generators comprise approximately one-third of its membership. The OWA also explained that:

³ APPrO has previously been found eligible for cost awards in respect of the EB-2010-0377, EB-2010-0379 and EB-2011-0043 initiatives.

⁴ OSEA has previously been found eligible for cost awards in respect of all five RRFE initiatives.

⁵ December Decision, at page 11.

... [it] 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.

Furthermore, OWA argued that there is limited overlap, if any, among the OWA's members and those of APAO, OSEA and APPrO. Lastly, OWA also indicated it will work with APAO, OSEA, and APPrO to coordinate comments and submissions, where possible.

Since APAO and OWA appear to represent interests and offer expertise and perspective distinct from that offered by OSEA and APPrO, and since in this coordinated consultation special circumstances have been found to exist to warrant the eligibility of associations representing generators in general, the Board finds that APAO and OWA are eligible for an award of costs in relation to each of the initiatives for which eligibility was requested.

Cost Award Eligibility Requests for Experts

In the December Decision, the Board extended the deadline by which eligible participants could request eligibility to claim the costs of an expert to December 16, 2011. The Board subsequently received such requests, both dated December 16, 2011, from the Canadian Manufacturers & Exporters ("CME") and the Retail Council of Canada ("RCC"). CME filed additional information relating to its request on January 30, 2012. The Board did not receive any objections from distributors or transmitters to those requests within the time specified for that purpose in the December Decision.

CME's request pertains to the costs of an expert for the EB-2010-0377 and EB-2010-0378 initiatives. In its letter, CME indicated that it wanted to retain an expert, Mr. Bruce Sharp of Aegent Energy Advisors, to provide a report on an appropriate methodology to enable electricity prices to be estimated. The Board finds that CME is eligible for an award of costs for its expert. The Board also encourages other interested stakeholders to collaborate with CME in this endeavour, and notes that CME has indicated that the Consumers Council of Canada, School Energy Coalition, Vulnerable Energy Consumers Coalition, and the Federation of Rental-Housing Providers of Ontario have all expressed support for the retention of Mr. Sharp.

In its request, CME also indicated that it was contemplating requesting awards for the costs of an expert with respect to the appropriate way to structure and conduct a customer survey to elicit information relevant to the Board's consideration of matters pertaining to "affordability" and "sustainability". The Board will address any such request as and when it is made by CME.

RCC's request for cost eligibility pertains to the costs of an expert for all five RRFE initiatives. RCC itself was previously granted eligibility for cost awards for all five initiatives in the Board's December 8, 2011 Supplemental Decision on Cost Eligibility #2. The Board finds that RCC is eligible for cost awards for its expert.

Other Cost Award Eligibility Requests

The Federation of Rental-housing Providers of Ontario ("FRPO") submitted a request for eligibility, dated December 10, 2011, for the EB-2011-0004 and EB-2011-0043 initiatives. In its letter, FRPO noted that the Board previously found FRPO eligible for an award of costs in respect of the EB-2010-0377, EB-2010-0378 and EB-2010-0379 initiatives.⁶ FRPO also indicated that, in preparing for and attending the Information Session held on December 8 and 9, 2011, it became aware of the need for a coordinated review of all five RRFE initiatives, and as such is now seeking eligibility for the remaining two initiatives for which FRPO had not previously requested eligibility.

Distributors and transmitters were given until December 28, 2011 to file any objections they might have to FRPO's request. The Board did not receive any objections to FRPO's request from distributors or transmitters. Based on the criteria set out in section 3 of the Board's *Practice Direction on Cost Awards* (the "*Practice Direction*"), the Board finds that FRPO is eligible for an award of costs in respect of the EB-2011-0004 and EB-2011-0043 initiatives.

The Low-Income Energy Network ("LIEN") submitted a request for eligibility, dated January 10, 2012, for the EB-2011-0004 and EB-2011-0043 initiatives. LIEN noted that it had previously been found eligible in respect of the EB-2010-0377, EB-2010-0378 and EB-2010-0379 initiatives, but following the Information Session held on December 8 and 9, 2011 now understands that rate mitigation would be considered in all five RRFE initiatives. As such, LIEN is now requesting eligibility in respect of the EB-2011-0004

⁶ February 1, 2011 Decision on Cost Eligibility (EB-2010-0377, EB-2010-0378, EB-2010-0379).

and EB-2011-0043 initiatives. Subject to any objections that might be received from distributors and transmitters (due February 3, 2012), and based on the criteria set out in section 3 of the Board's *Practice Direction*, the Board finds LIEN eligible for an award of costs in respect of the two requested initiatives.

The Board takes this opportunity to confirm the following for participants that have been determined to be eligible for cost awards in respect of one or more of the RRFE initiatives:

- i. Cost awards will only be available for participation (including through the work of an expert) that is clearly within the scope of the initiative(s) in question that is focused on the interests of the constituency that the participant represents.
- ii. An expert retained by a participant must assist the Board by providing impartial and objective expert advice. It is the Board's expectation that experts will prepare separate expert reports based on the independent application of their respective expertise.
- iii. In deciding to make cost awards available in respect of the work of an expert, the Board makes no comment as to whether or how the expert's work product might be used in the future beyond assisting the Board in the development of the RRFE framework.

ISSUED at Toronto, February 1, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary