



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 #4

April 10, 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.

Table 1 below summarizes new requests for cost eligibility received by the Board that are addressed in this Decision as well as the Board's earlier cost eligibility decisions in relation to the participants making those requests, 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
Association of Power Producers of Ontario (APPrO)	✓/ R_{Ex}	R	✓	✓	R
Canadian District Energy Association (CDEA)	R		R		
Canadian Solar Industries Association (CanSIA)	R	R	R	R	
Canadian Wind Energy Association (CanWEA)	R	R	R	R	R

On March 19, 2012, the Board issued a revised *Practice Direction on Cost Awards* (the “Practice Direction”). However, section 14.01 of the revised Practice Direction indicates that the revisions apply only to cost eligibility requests filed on or after March 19, 2012. Accordingly, the Board has considered these most recent requests for cost award eligibility on the basis of the former Practice Direction.

Cost Award Eligibility Request by the Association of Power Producers of Ontario

On March 1, 2012, the Association of Power Producers of Ontario (“APPrO”), having previously been found eligible in respect of three of the five RRFE initiatives, requested eligibility in respect of the remaining two. The Board grants cost award eligibility to APPrO in relation to these two initiatives, on the same grounds and for the same reasons as set out in earlier decisions pertaining to APPrO’s requests for cost award eligibility in relation to the other three RRFE initiatives.¹

¹ Decision on Cost Eligibility dated February 1, 2011 (for the EB-2010-0377 and EB-2010-0379 initiatives) and Decision on Cost Eligibility dated May 4, 2011 (for the EB-2010-0043 initiative).

APPrO's request for cost eligibility also included two further requests.

First, APPrO has requested eligibility for the cost of a case manager/case coordinator, specifically:

...cost eligibility for Jake Brooks of APPrO to act as a case manager/case coordinator for several generator stakeholder groups. This set of generator stakeholder groups is yet to be finalized and will be the subject of further communications with the Board. It may include any or all of APPrO, OWA, APAO, CanSIA, CanWEA, and CDEA (the Association of Power Producers of Ontario, Ontario Waterpower Association, Agri-Energy Producers Association of Ontario, Canadian Solar Industries Association, Canadian Wind Energy Association, and Canadian District Energy Association, respectively).

The Board notes that Mr. Brooks is the Executive Director of APPrO. Section 6.05 of the Practice Direction states that "a party will not be compensated for time spent by its employees or officers in preparing for or attending at Board processes."

As noted in earlier communications pertaining to cost awards for the RRFE initiatives, the Board expects participants with similar interests to coordinate with one another. The Board believes that the costs of any case management activities are adequately covered within the envelope of the cost awards that are being made available for this consultation, and therefore does not believe that it is appropriate to provide additional funding for a coordinator. The Board reminds participants that it may reduce cost claim amounts if there are significant redundancies among contributions.

APPrO also requested eligibility to cover the costs of a "technical expert to act on behalf of a coordinated group of cost eligible generator stakeholders for the RRFE proceedings on network investment planning and related financial issues as applicable."

As set out in the Board's [letter](#) of November 8, 2011, in order for the Board to make a determination on the eligibility of the participant (or group of participants) to claim the costs of a proposed expert, the participant must provide the name and the credentials of the expert demonstrating relevant subject-matter expertise and special knowledge or experience relevant to the initiative(s) in question. Since this information has not been provided to the Board, the Board makes no finding on this request at this time.

Cost Award Eligibility Requests by the Canadian District Energy Association, the Canadian Solar Industries Association and the Canadian Wind Energy Association

On March 1, 2012, the Canadian District Energy Association ("CDEA") requested eligibility for the Distribution Network Investment Planning (EB-2010-0377) and Defining and Measuring Performance (EB-2010-0378) initiatives. The CDEA's letter indicates that it is a trade association with over 85 member utilities, government agencies, building owners, consulting engineers, suppliers, developers, bankers and investors who share a common interest in promoting the growth of district energy in Canada.

On March 1, 2012, the Canadian Solar Industries Association ("CanSIA") requested eligibility for an award of costs in relation to the Distribution Network Investment Planning (EB-2010-0377), Approaches to Mitigation (EB-2010-0378), Defining and Measuring Performance (EB-2010-0378) and Regional Planning (EB-2011-0043) initiatives. CanSIA's letter indicates that it is the national trade association that represents over 650 solar energy companies throughout Canada and over 500 in the province of Ontario.

On March 5, 2012, the Canadian Wind Energy Association ("CanWEA") requested cost eligibility in respect of all five of the RRFE initiatives. CanWEA's letter indicates that it is a trade association that promotes wind energy in Canada, and represents more than 450 corporate members including wind energy developers, owners and operators, wind

turbine manufacturers and component suppliers, as well as a broad range of service providers to the industry.

In assessing the cost eligibility of an association, the Board has previously stated that it will consider the association's membership rather than considering the association separate and apart from its members.² The membership of each of CDEA, CanSIA and CanWEA consists principally of commercial service providers, although generators and others (for example, utilities and government agencies) are also members. Generators and utilities are *prima facie* not eligible for an award of costs under the Practice Direction. It has been the Board's practice that commercial entities such as commercial service providers are also *prima facie* ineligible for an award of costs by reason that they primarily represent their own commercial interests rather than "primarily representing" a public interest.

The Board finds that, by virtue of their respective membership, CDEA, CanSIA and CanWEA are *prima facie* not eligible for an award of costs. However, the Board believes that it is appropriate to grant cost award eligibility to each of these associations in the circumstances of this consultation.

The Board has previously determined that special circumstances exist to warrant the eligibility of associations representing commercial service providers and generators in this consultation. Of particular relevance in this regard are decisions in which the Board determined that the Ontario Sustainable Energy Association, whose membership composition is similar to that of CDEA, CanSIA and CanWEA, is eligible for an award of costs.³

² March 22, 2011 Decision on Issues and Cost Eligibility (EB-2011-0011).

³ [February 1, 2011 Decision on Cost Eligibility \(EB-2010-0377, 0378, 0379\)](#); [April 4, 2011 Decision on Cost Eligibility \(EB-2011-0004\)](#) and [May 4, 2011 Decision on Cost Eligibility \(EB-2011-0043\)](#).

On that basis, and since CDEA, CanSIA, and CanWEA appear to represent interests and offer expertise and perspectives distinct from that offered by other generator participants, the Board finds CDEA, CanSIA, and CanWEA eligible for an award of costs in relation to each of the initiatives for which eligibility was requested.

ISSUED at Toronto, April 10, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary