

July 19, 2012

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge St.
Toronto, Ontario
(by email)

re. EB-2011-0394 Cost Submission

Dear Ms. Walli,

These submissions constitute a request that the Board consider issuing an order that the applicant in EB-2011-0394 to pay an honorarium to Manitoulin Coalition for Safe Energy Alternatives (MCSEA) associated with its participation throughout the EB-2011-0394 case.

Review of Applicable Rules

MCSEA makes this submission with reference primarily to Section 3.08 of the Board's Practice Direction on Cost Awards, which states:

The Board may, in appropriate circumstances, award an honorarium in such amount as the Board determines appropriate recognizing individual efforts in preparing and presenting an intervention, submission or written comments.

The main focus of MCSEA's efforts in the case was with the specific purpose of facilitating a group intervention. Although MCSEA's request is for an honorarium, our role can best be described as that of a "case manager", as that phrase is defined in the Board's current Practice Direction on Cost Awards.

Section 8.01 Board's current Practice Direction on Cost Awards makes the following statement directed at promoting group interventions:

"In a case where a number of eligible parties have joined together for the purpose of a combined intervention, the Board will normally allow reasonable expenses necessary for the establishment and conduct of such a group intervention."

MCSEA's intervention followed Section 8.01.

Section 5.01 of the Board's Practice Direction on Cost Awards sets out ten (10) criteria that guide the Board in awarding costs. MCSEA met each of these as noted here.

Criteria a) "participated responsibly in the process"

MCSEA met almost all of the Board's deadlines, whereas the applicant was late on many occasions. MCSEA submitted a wide range of documents, interrogatories, and submission that completed the record of the proceeding.

Criteria b) "asked questions in interrogatories or on cross-examination which were

unduly repetitive of questions already asked by one or more other parties”

MCSEA’s interrogatories were unique, informative and assisted the Board in its decision and conditions imposed.

MCSEA identified many inconsistencies and errors in the application.

MCSEA is heartened with the conditions set out in the Board Decision ensuring more due diligence by the applicant and looks forward to seeing the Board enforce those conditions.

Criteria c) “made reasonable efforts to ensure that its evidence or intervention was not unduly repetitive of evidence presented by or the intervention of one or more other parties”

MCSEA has 55 submissions on the record, many with evidence attachments. These submission were not repetitive of the submissions of others. In general, these requests for clarification and evidence countered submissions or responses from the applicant or addressed areas where the Board’s own processes can be improved to facilitate better public participation, such as improved clarity with respect to dates in the publication of notices.

Criteria d) “made reasonable efforts to co-operate with one or more other parties in order to reduce the duplication of interrogatories, evidence, and questions on cross examination or interventions:

MCSEA intervention worked closely with the following parties. The coordinating of other groups to assist the Board included members of the public comments and these First Nation and non First Nation supporters listed below. Many individual citizens participated but are not listed.

Wikwemikong Elders Community Members and Youth
Wind Concerns Ontario
NAPAW North American Platform Against Wind
Manitoulin Nature Club
Bay Niche Conservancy
Lake Superior Action Research Coalition

The effect of MCSEA’s case management activities was to coordinate interventions of disparate parties, identify issues, and ultimately represent other intervenors in the interrogatory requests and requests for clarification.

Criteria e) “made reasonable efforts to combine its intervention with that of one or more similarly interested parties”

There are on record 20 letters from various like-minded intervenors that were coordinated through the information supplied to them about this process. MCSEA worked with all these people and groups to better streamline the process. A key element of MCSEA’s role was to support and coordinate the interventions of aboriginal groups and First Nation supporters to facilitate First Nation involvement.

Criteria f) “contributed to a better understanding by the Board of one or more of the issues in the process addressed by the party”

MCSEA drew to the Board's attention important concerns about the Board's longstanding practices that impact the clarity in published "Notice of Application". Specifically, MCSEA recommended enhancements to the presentation of deadline dates for public participation. Although the Board determined that in this particular instance, the applicant's published notices were adequate, MCSEA's intervention provides input for any future review of the procedures related to the publication of notices.

Requests for information on process were commenced at the outset in calls to OEB Board Staff for intervention participation and timelines. Other calls and requests for information on process were submitted to Board Staff.

Criteria g) "complied with directions of the Board, including directions related to the prefilng of written evidence"

MCSEA met the Board's requirements in their direction issued to intervenor participation and was reasonably successful in meeting the Board's timelines.

Criteria h) "addressed issues in its interrogatories, its written or oral evidence, or in its questions on cross-examination, or in its argument or otherwise in its intervention which were not relevant to the issues determined by the Board in the process"

MCSEA, as a member of the public and representing many other intervenors, made every attempt to follow the Board's mandate in this process. Interrogatories and clarifications to interrogatories were submitted without prejudice and decisions to not answer were self-determined by the applicant.

Criteria i) "engaged in any other conduct that tended to lengthen unnecessarily the duration of the process"

MCSEA's compliance with the Board's guidelines facilitated a timely issuance of the Decision. All the date extensions requests in the case were initiated by the applicant.

Criteria j) "engaged in any other conduct which the Board considers found was inappropriate or irresponsible."

MCSEA was respectful towards the Board's process throughout, including and particularly in communication with interested members of the public, the media, and MCSEA's advertisements issued during the process. MCSEA supported a large group intervention that assisted the Board in defining the scope of the proceeding.

Precedent

In a comparable case, EB-2007-0050 which was Hydro One's Bruce to Milton leave to construct, an individual citizen, Mr. Pappas, participated actively. In that case, the Board ordered, and Hydro One accepted, an honorarium that worked out to about \$150 per day of hearing time.

Further Submissions

MCSEA facilitated aboriginal participation by Wikwemikong Elders, Community Members and Youth and also by many individual aboriginal citizens from member bands of UCCMM and Mnidoo Mnising Power.

MCSEA saved the Board's time, completed the record of the proceeding, streamlined the consideration of the issues by coordinating a wide range of groups, coordinated groups through regular communication with members and group meetings, published regular ads in the local newspaper updating the public on the progress of the case, and reported the direction of Board Staff to members.

With the participation of MCSEA, the public record was clarified that there will be no impact on ratepayers from the proposed transmission facilities as that concept is restricted by the Board's legislative mandate. This finding is a benefit to the applicant. MCSEA does contend that the FIT award for the project, that is borne by the ratepayers of the province of Ontario, does ultimately pay for the Applicant's transmission line approval request.

MCSEA made 55 records with the Board in relation to this hearing other than this honorarium request. These include:

Submissions -8
Interrogatories to Applicant - 35
Correspondence - 3
Interrogatory response from applicant - 1
Intervenor request letter - 2
Intervenor evidence letters - 5
Intervenor argument - 1

Material costs included office expenses and activities in mailing submissions, field visits, ads in local paper updating the public on the unfolding OEB process, and communication with supporters. In the absence of detailed accounts, MCSEA is prepared to absorb these costs.

In determining a cost of time spent specifically related to case management and coordinating the activities of like-minded groups, it is useful to outline these activities. These activities included:

- familiarizing ourselves with the Board's rules, processes and precedents
- research and assembling evidence from the local paper and library,
- research and assembling relevant Band Council resolutions from affect First Nations,
- setting up and coordinating group meetings with First Nation and non First Nation supporters,
- preparing submissions for process involvement and information disclosure,
- follow-up on First Nation meetings and non First Nation meetings, addressing their issues and concerns, seeking assistance from experienced intervenor advisors and experts, continually reviewing the application and associated documents in detail, reviewing interrogatory responses, reviewing all letters sent to the Board, phone calls to many parties including Board Staff, addressing deficiencies in McLean's compliance with Board Orders, accessing the applicant's website, primary research, and obtaining legal advice.

MCSEA and like-minded intervenors were involved in this process for 202 days since Thurs, December 29, 2011 until the issuance of the Decision with Reasons (and Conditions) on June

28, 2012. Although approximately 55 days of this time was on weekends, Christmas Holidays, and long weekends, much of this time was away from family activities. Approximately 147 weekdays elapsed during the process. It must be noted though that not a day went by that the impact of this process and potential outcome weighed on MCSEA and its supporters.

The real time hands-on costs to which we cannot recover, would be an estimate in hours spent in our involvement. A close estimate may be the costs/hours charged by the applicant's legal representative firm. If the applicant opposes MCSEA's submissions on an honorarium, it might provide on the record an estimate of its legal costs and hours.

How does one put a cost on the the time and energy spent on a potential approval that has so many impacts? It seems to work down to actual hours that stretched from early morning until late night.

Being a volunteer organization, MCSEA's expenses and hours were not tracked in detail. Many members of MCSEA and allied organization worked long and hard on our intervention. The bulk of the effort was undertaken by myself, Raymond Beaudry, as a representative of MCSEA and a landowner directly impacted by the transmission line.

Our most conservative estimate is that spent approximately 588 hours on the case based on 147 weekdays at 6 hrs per day.

Calculated on the basis of an 8 hour day, that corresponds to 110.25 of full time work equivalent. At \$150/day, if the rate applies, the resulting sum is \$16,537.50.

To put this in context, if MCSEA was making a claim at the lowest rate shown on the Board's Cost Award Tariff, 882 hours would correspond to a claim of approximately \$149,940.

The Board is facing many similar applications. By providing recognition by way of an honorarium for a responsible intervention, future processes might be enhanced by adequate public participation.

We feel that our involvement has assisted the Board. MCSEA would humbly request the Board's favourable consideration in issuing an honorarium, rather than a cost award, that best reflects the time spent on this hearing.

Thank you,

Raymond Beaudry
MCSEA

- c. James Sidlofsky, Borden Ladner Gervais
Gord Potts, Northland Power
Art Jacko, UCCMM