



EB-2012-0383

IN THE MATTER OF sections 70 and 78 of the *Ontario Energy Board Act 1998*, S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF intervention and cost eligibility for a Board-initiated consultation to review the cost allocation policy with respect to unmetered loads.

BEFORE: Marika Hare
Presiding Member

Cathy Spoel
Member

DECISION ON INTERVENTIONS AND COST AWARD ELIGIBILITY AND ORDER

November 15, 2012

1.0 INTRODUCTION

The Ontario Energy Board has initiated a consultation process to review the cost allocation policy with respect to unmetered loads which encompasses Street Lighting, Unmetered Scattered Loads, and Sentinel Lighting classes. The Board has assigned File No. EB-2012-0383 to the consultation.

On October 1, 2012, the Board issued a letter to all rate-regulated licenced electricity distributors, participants in consultation EB-2010-0219, and other interested parties to invite participation with respect to a working group and a comment process as part of the consultation.

2.0 REQUESTS

The 15 parties (or, in some instances, groups of parties) listed below are requesting intervenor status in the proceeding. Those parties who are also requesting eligibility to receive cost awards are marked with an asterisk “ * ”. Each of the requests is posted on the [Review of Cost Allocation Policy for Unmetered Loads](#) page of the Board’s website: ([link](#)).

- London Property Management Association (“LPMA”) *
- Energy Probe Research Foundation (“Energy Probe”) *
- The Association of Municipalities of Ontario (the “AMO”) *
- The Vulnerable Energy Consumers Coalition (“VECC”) *
- City of Brampton
- City of Toronto
- City of Hamilton
- Innisfil Hydro
- Hydro One Networks Inc.
- The CHEC Group¹
- Waterloo North Hydro Inc.
- Rogers Cable Communications Inc.
- Horizon Utilities Corporation
- The Electricity Distributors Association
- The Coalition of Large Distributors²

There was one request for observer status from Manitoba Hydro, which the Board hereby grants.

With the exception of LPMA, each of these 15 parties requested to send a representative (or representatives) to participate in the Board’s Unmetered Loads Working Group (“ULWG”) with respect to this consultation.

¹ Representing 12 Local Distribution Companies (LDCs): Centre Wellington Hydro, Innisfil Hydro Distribution Systems, Lakeland Power Distribution, Orangeville Hydro, Rideau St. Lawrence Distribution, Wellington North Power, COLLUS PowerStream, Lakefront Utilities, Midland Power Utility, Parry Sound Power, Wasaga Distribution, and West Coast Huron Energy.

² Representing six large LDCs: Enersource Hydro Mississauga Inc., Horizon Utilities Corporation, Hydro Ottawa Limited, PowerStream Inc., Toronto Hydro-Electric System Limited, and Veridian Connections Inc.

2.1 Interventions

The Board's October 1, 2012 letter provided an opportunity for parties to file an objection to the intervention request of any other party. No objections were filed.

2.2 Cost Eligibility

The Board received four requests for costs eligibility. VECC, Energy Probe, LPMA, and the AMO.

VECC and Energy Probe applied for cost eligibility mainly for the purpose of retaining technical consultant representatives for the working group and any comment process.

LPMA applied for cost eligibility, but only with respect to any comment process.

The AMO noted in its intervention request that it is not cost eligible in the normal course, but submitted that it was requesting costs in this instance with the intention of retaining a technical consultant (Mr. Bruce Bacon, BLG) to represent its interests at the working group meetings, and for any comment process. The AMO cited approved interventions of municipalities with cost award eligibility in the Board's East-West Tie proceeding³ and submitted this as precedent for granting costs to the AMO in this proceeding. The AMO specifically submitted that the Board indicated in the East-West Tie proceeding that there was a public interest related to the role of municipalities in land use planning and development more generally in the region.

3.0 BOARD FINDINGS

3.1 Interventions

The Board is guided by Rule 23.02 of the Board's *Rules of Practice and Procedure* in making its determination on the requests for intervenor status. That Rule states as follows:

23.02 The person applying for intervenor status must satisfy the Board that he or she has a substantial interest and intends to participate actively and responsibly in the proceeding by submitting evidence, argument or interrogatories, or by cross examining a witness.

³ EB-2011-0140, Decision on Intervention and Cost Award Eligibility, March 30, 2012

The Board finds that all of the parties requesting intervenor status meet the requirements of Rule 23.02 and are eligible to participate as intervenors in this consultation.

The Board will expect intervenors to limit their participation to those issues that are within the scope of the consultation.

3.2 Cost Eligibility

The Board has considered each of the requests for cost award eligibility. The Board is guided by Section 3 of the *Practice Direction on Cost Awards* ("Practice Direction"). The Board also notes that it has not received any objections to any of the requests for cost award eligibility.

Municipalities

Until recently, the Board has considered applications for cost eligibility from municipalities on a case-by-case basis, and has found municipalities to generally be ineligible for costs. This is, in part, because municipalities and their associations have access to a revenue stream from their own constituent taxpayers and the Board has therefore found that they should not be funded by ratepayers. In addition, in some instances, municipalities are owners of regulated distributors who are ineligible for costs. Finally, the Board considers that municipalities do not primarily represent the direct interests of ratepayers in relation to regulated services.

On March 19, 2012, the Board issued a revised Practice Direction which, in section 3.05(i), excludes government bodies, including municipalities, from eligibility. Section 14.01 of the revised Practice Direction indicates that the revisions apply to cost eligibility requests filed on or after March 19, 2012. Accordingly, the Board will consider the requests of the municipalities on the basis of the revised Practice Direction.

The granting of cost eligibility is a matter within the Board's discretion and when making such a determination, the Board has a responsibility to ensure that cost eligibility is granted only in appropriate circumstances (those circumstances identified in section 3.03 of the Practice Direction) or special circumstances (in accordance with section 3.07 of the Practice Direction).

This consultation is concerned with determining the appropriate terminology and methodology for the allocation of costs to unmetered loads. The issues of this consultation clearly relate to those of cost allocation and rate design, which relate directly to the Board's mandate to provide effective, fair and transparent regulation. The Board notes that no municipality that independently requested intervenor status for this consultation has asked to be eligible for an award of costs.

The Board finds that this consultation does not present a special circumstance in which it will grant cost eligibility to the AMO. The AMO's interest in this consultation is in the role of municipalities as representatives of ratepayers or distributors.

VECC, Energy Probe, LPMA

Both VECC and Energy Probe indicated in their respective cost eligibility submissions that their primary interests are those of residential ratepayers, or a subset thereof.

For these reasons, the Board will grant cost eligibility to VECC and Energy Probe related to the working group and any comment process.

LPMA is eligible for costs, but only with respect to any comment process.

Preparation for, attendance at, and reporting on working group meetings will allow a maximum of 11 hours for preparation, attendance, and reporting time for each of the days that the working group meets.. The Board will provide participants with further details regarding maximum hours with respect to any comment process at a later date.

THE BOARD ORDERS THAT:

1. Each of the parties listed in section 2.0 above is granted intervenor status.
2. Manitoba Hydro is granted observer status.
3. The following parties are eligible for cost awards: the Vulnerable Energy Consumer Coalition, Energy Probe Research Foundation, and the London Property Management Association.
4. LPMA is only eligible for costs with respect to any comment process.

DATED at Toronto, November 15, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary