



EB-2010-0377
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 implementation of the renewed regulatory
framework for electricity distributors.

BEFORE Marika Hare
Presiding Member

Ken Quesnelle
Member

DECISION ON COST ELIGIBILITY

On October 18, 2012, the Board released its “Report of the Board: A Renewed Regulatory Framework for Electricity Distributors: A Performance Based Approach” (the “RRFE Report”). In the letter accompanying the release of the RRFE Report (the “October 18 Letter”), the Board also announced the consultation activities that would be undertaken for the purposes of implementing the policies set out in the RRFE Report. Those consultation activities are generally centered around implementation of the following: (i) an integrated approach to network planning; (ii) regional infrastructure planning; (iii) smart grid development; and (iv) performance, benchmarking and rate adjustment indices (the “Consultation Activities”). Working groups have been established to assist staff in relation to the Consultation Activities.

In the October 18 Letter, the Board indicated that cost awards would be available to eligible persons under section 30 of the *Ontario Energy Board Act, 1998* in relation to

their participation in one or more of the Consultation Activities, and that costs to be awarded will be recovered from rate-regulated licensed electricity distributors (65%) and rate-regulated licensed electricity transmitters (35%). The Board also indicated that it would not grandfather cost award eligibility awarded prior to the issuance of the October 18 Letter, and that stakeholders wishing to be eligible for cost awards must therefore apply for cost eligibility status.

Further to the October 18 Letter, the Board received requests for cost eligibility from the following:

- Association of Power Producers of Ontario (“APPrO”)
- Biogas Association (formerly the Agri-energy Producers of Ontario)
- Canadian Wind Energy Association (“CanWEA”)
- Canadian Solar Energy Association (“CanSIA”)
- Electrical Contractors Association of Ontario (“ECAO”)
- Energy Probe Research Foundation (“Energy Probe”)
- Low-income Energy Network (“LIEN”)
- Northwatch
- Northwestern Ontario Associated Chambers of Commerce (“NOACC”)
- NRStor Inc. (“NRStor”)
- Ontario Waterpower Association (“OWA”)
- Ontario Sustainable Energy Association (“OSEA”)
- Retail Council of Canada (“RCC”)

Electricity distributors and transmitters were given an opportunity to file any objections that they might have in relation to the cost eligibility requests. No objections were filed within the deadline established for that purpose in the October 18 Letter.

On October 30, 2012, the Board issued a letter giving notice of the stakeholders that had been invited to participate as members of the working groups referred to above (the “October 30 Letter”). In that Letter, the Board also noted that it had considered it appropriate to waive the requirement to submit a new request for cost eligibility for working group participants. The October 30 Letter further stated that, in the case of APPrO (a participant on the regional planning working group) and OSEA (a participant

on the smart grid working group), which are generally considered prima facie ineligible for an award of costs, the waiver is limited to participation on the relevant working group and any consultation activities that are directly related to the same subject matter. By contrast, the waiver provided to working group participants that represent the interests of ratepayers¹ extends to cover all Consultation Activities, and these participants are therefore eligible for an award of costs in respect of all Consultation Activities.

The requests for cost award eligibility filed by APPrO and OSEA were filed prior to issuance of the October 30 Letter, and inquiries were therefore made of both organizations by Board staff to elicit confirmation of the scope of their cost award eligibility requests. APPrO confirmed that it was seeking eligibility for all Consultation Activities, and not simply those referred to in the October 30 Letter. No response to Board staff's inquiry was received from OSEA.

Eligibility of Participants

Based on the criteria set out in section 3 of the Board's *Practice Direction on Cost Awards* (the "Practice Direction"), the Board has determined that Energy Probe, LIEN, Northwatch, NOACC, and RCC are eligible for an award of costs in respect of their participation in all of the Consultation Activities for which they have sought eligibility.

The Board's determination on NOACC's eligibility is subject to the same limitation as that imposed by the Board's June 27, 2011 Decision on Motions to Review and its December 2, 2011 Decision on Cost Eligibility; namely:

NOACC's cost award eligibility and any costs awarded to them will be limited to participation that is focussed on the interests of small commercial or business consumers in their capacity as ratepayers (for example, in relation to cost responsibility for electricity infrastructure), and not in relation to the broader business interests of this class of consumers in terms of matters such as regional economic development more generally.

The Board extends this same limitation to RCC, whose eligibility and any cost award will be limited to participation that is focussed on the interests of commercial or business consumers in their capacity as ratepayers.

¹ The Association of Major Power Consumers in Ontario, the Consumers Council of Canada, the Vulnerable Energy Consumers Coalition, the School Energy Coalition and the Building Owners and Managers Association.

The remaining participants that are requesting cost award eligibility have done so in relation to one or more of the Consultation Activities. With the exception of NRStor (discussed separately below), all of them were determined to be eligible for an award of costs in respect of some or all of the initiatives that together comprised the coordinated consultation leading to the issuance of the RRFE Report. In each of these cases, the participant was prima facie ineligible under the Practice Direction, either as an association representing regulated entities or as an association primarily representing commercial rather than ratepayer interests, but was ultimately considered eligible by exception.²

The Consultation Activities at issue now are focussed on the implementation of the policies set out in the RRFE Report. As such, the scope of the Consultation Activities is considerably narrower than the scope of the consultations that were undertaken to assist the Board in the development of its renewed regulatory framework policies. In this context, the Board does not consider that cost award eligibility is warranted under any of the exceptions set out in the Practice Direction. Accordingly, the Board has determined that the following are not eligible for an award of costs in respect of any of the Consultation Activities: Biogas Association; CanWEA; CanSIA; ECAO; and OWA. For the same reason, the Board will not extend the cost award eligibility of APPrO or OSEA to any Consultation Activities beyond those identified in respect of these participants in the October 30 Letter as noted above.

In its request for cost award eligibility, APPrO stated the following:

Together with other generator organizations (including, without limitation, CanWEA, CanSIA, OWA and the Biogas Association) APPrO hopes to retain a technical expert (ICF Consulting or Navigant as per APPrO's prior approved expert funding eligibility, which has yet to be drawn upon) to speak to common issues in relation to distribution network and regional infrastructure planning, smart grid, cost mitigation, as well as applicable performance metrics.

As noted above, the October 18 Letter specifically stated that cost award eligibility awarded prior to the issuance of the Letter was not being grandfathered. This phase of the RRFE deals largely with implementation matters, not the higher level policy matters

² See the following Decisions on Cost Eligibility: [February 1, 2011 Decision on Cost Eligibility](#); [December 2, 2011 Decision on Cost Eligibility](#); [February 1, 2012 Supplemental Decision on Cost Eligibility #3](#); [April 10, 2012 Supplemental Decision on Cost Eligibility #4](#).

ECAO had requested cost eligibility in relation to three initiatives, but was granted eligibility only in respect of two.

addressed in the earlier consultation which did involve a number of consultants. Moreover, the Board has now determined that organizations representing generators are not eligible for an award of costs in relation to the Consultation Activities, with the exception of the cost award eligibility granted to APPrO in respect of its participation in the regional infrastructure planning working group and any consultation activities that are directly related to the same subject matter. Accordingly, the Board will not provide cost award funding for APPrO's expert.

The Board also received a request for cost eligibility from NRStor which, according to its request, is an electricity storage company that is implementing electricity storage technologies in Ontario and potentially elsewhere in Canada and abroad. NRStor's request states that it is eligible for an award of costs given that it is the only entity that represents "the new and developing electricity storage sector" and that it "represents a unique unrepresented and emerging class of transmission and distribution consumers in the Ontario electricity sector". The Board finds that NRStor primarily represents its own commercial interest (other than as a ratepayer) rather than the public interest. As such, the Board also finds that NRStor is not eligible for an award of costs in respect of any of the Consultation Activities.

The Board takes this opportunity to confirm that it welcomes and encourages participation in the Consultation Activities by all interested participants, including those that the Board has determined to be ineligible for an award of costs. The Board also takes this opportunity to confirm for all eligible participants (including but not limited to those that are the subject of this Decision on Cost Eligibility) the following in relation to cost awards generally:

- i. The Board cautions participants that cost awards are available only in respect of issues that are clearly within the scope of the Consultation Activity(ies) in which they are participating, and not in respect of issues that, while perhaps related, are already addressed by existing Board policies (such as conservation and demand management).
- ii. Where similar interests are shared by participants that are eligible for cost awards, the Board expects that reasonable efforts will be made to combine participation or to cooperate. As stated in the Practice Direction, the Board will consider any lack of cooperation when determining the amount of a cost award.

- iii. As stated in the Practice Direction, cost awards are not available in relation to time spent by employees or officers of an eligible participant.
- iv. Except as may otherwise be expressly provided by the Board at the relevant time, the hourly limits for eligible activities apply to each participant that is eligible for an award of costs, and not to each individual that may be acting on behalf of an eligible participant.

ISSUED at Toronto, January 8, 2013

ONTARIO ENERGY BOARD

Original signed by

Marika Hare
Presiding Member

Original signed by

Ken Quesnelle
Member