



EB-2011-0021

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

**AND IN THE MATTER OF** an application pursuant to  
section 74 of the *Ontario Energy Board Act*, 1998 by  
Hydro One Remote Communities Inc. to amend its  
Electricity Distribution Licence ED-2003-0037.

**By delegation, before:** Jennifer Lea

## **DECISION AND ORDER ON COST AWARDS**

**June 27, 2013**

### **Background**

On December 23, 2010, Hydro One Remote Communities Inc. ("Remotes") filed an application with the Ontario Energy Board and on March 1, 2011 filed an updated application for a licence amendment under section 74 of the *Ontario Energy Board Act*, 1998 seeking exemptions from the following sections of the *Distribution System Code* ("DSC"): 2.7.1.2; 2.7.1.3; 2.7.2; 2.8.1; 2.8.2; 4.2.2.3; 4.2.3.1(a); 6.1.2.1; 6.1.2.2 and 7.10.

On April 21, 2011, the Board issued Procedural Order No. 1, granting Nishnawbe Aski Nation ("NAN") intervenor status and cost award eligibility. On April 25, 2013, the Board issued its Decision and Order on the application, in which it set out the process for NAN to file its cost claim and to respond to any objections raised by Remotes. NAN filed a cost claim totaling \$90,153.97 on May 17, 2013. While Remotes did not raise an objection to any specific item in the claim, by letter dated May 27, 2013, Remotes asked that the Board check the disbursement receipts and ensure that the total claim is just

and appropriate, “given the excessive dollars and not seemingly related hours being claimed”.

## Findings

The level of costs claimed is very high for a written hearing for a licensing proceeding before the Board. The proceeding was unusual for both its length and the importance of the issues considered by the Board. The sections of the DSC from which Remotes was granted exemptions are fundamental to the relationship between a distributor and its customers, and of key importance to low income customers. The exemptions raised issues of fairness, as Remotes’ customers will be treated differently than the customers of other distributors in the province. In addition, the Board required the applicant and NAN to discuss the proposed exemptions, and these discussions required preparation and travel (although there was no requirement that NAN be represented by counsel at these discussions). Given the level of costs claimed, I have reviewed the cost claim and the record of the proceeding in detail, and find that certain reductions will be made. I presume that the identification of the process as “Regional Planning (Energy)” on the cover sheet for the cost claim was a clerical error, but have checked the details of the claim to ensure the hours and disbursements claimed relate to proceeding EB-2011-0021.

The Board’s Practice Direction on Cost Awards provides in section 5.01 a list of factors that the Board may consider in determining the amount of a cost award to a party. Several of the factors listed are inapplicable in this case, as they apply only to proceedings with more than one intervenor. Subsections (f) and (h) are particularly relevant to this decision. Those subsections indicate the Board may consider whether the party claiming costs contributed to a better understanding by the Board of one or more issues in the process, and whether the party addressed issues in its interrogatories, its evidence or its argument which were not relevant to the issues in the process.

I find that while NAN’s intervention did contribute to a better understanding of issues in the process, some of the interrogatories filed by NAN and some of the arguments made in its submissions were not relevant to the issues in this proceeding. For example, the level of detail in the interrogatories regarding Remotes’ participation or representation in EB-2007-0722 and EB-2008-0150 was not helpful in elucidating the challenges facing

Remotes and its customers that prompted the application. The submission of NAN filed July 4, 2011 raised issues of *res judicata*, issue estoppel and the arrears of Standard A customers, which were not relevant to the Board's determination.

The NAN submission of July 4, 2011 also argued that Remotes' application triggered the Crown's duty to consult and accommodate Aboriginal people in circumstances where their title or rights claims may be affected by the actions of the Crown or its agents. In Procedural Order No. 3, NAN was invited (not required) to identify in a further submission the Aboriginal right or title which could be adversely affected by Remotes' application. NAN responded to this invitation in its submission dated November 30, 2011. However, as the Board found in the decision dated April 25, 2013, no existing or potential Aboriginal right, treaty right or Aboriginal title was properly identified in the submission. The submission of November 30, 2011 did not contribute to a better understanding of the issues, but rather presented arguments that were not helpful in determining the issues in the application.

As a result of these findings, the following deductions will be made from the hours claimed by Mr. Cunningham:

- Half of the hours claimed will be deducted with respect to the work on interrogatories and the submission of July 4, 2011 on the following dates:
  - April 29 and 30, 2011
  - May 6, 8, 9, 10, 12 and 13, 2011
  - June 6, 9, 16, 17, 18, 24, 28 and 30, 2011
  - July 3 and 4, 2011.
- The hours claimed for work on electrification agreements and the submission of November 30, 2011 will be deducted on the following dates:
  - Entire amount claimed: July 8, November 23 and 25, 2011 and April 30, 2012
  - Half of amount claimed to recognize work on other issues: November 29 and 30, 2011 and May 24, 2012.
- The partial hour claimed on June 19, 2012 for drafting a letter which was apparently never sent to the Board will be deducted (although the partial hour for discussion of the letter on June 18, 2012 will be allowed).

These deductions represent a total of 40.3 hours deducted, for a reduction in the total claim of \$15,027.87 including HST.

Forty-six hours were claimed for the time of Mr. Stewart, a consultant to NAN, at an hourly rate of \$200. I have reviewed the revised spreadsheet filed with the Board on June 21, 2013 and accept the claim for the time of Mr. Stewart.

With respect to disbursements, the Board strictly adheres to the government requirements requiring receipts for expenses claimed. The disbursement claim of \$6,669.57 will be reduced by \$4,889.26 due to missing or incomplete receipts for air travel (reduction of \$1,192.85), accommodation (reduction of \$3,575.67), agency fees (reduction of \$86.84) and courier fees (reduction of \$33.90).

As with any order made by an employee of the Board, this order may be appealed to the Board within 15 days.

**IT IS THEREFORE ORDERED THAT:**

1. Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, Remotes shall immediately pay NAN \$70,236.84.
2. Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, Remotes shall pay the Board's costs of and incidental to this proceeding immediately upon receipt of the Board's invoice.

**DATED** at Toronto, June 27, 2013.

**ONTARIO ENERGY BOARD**

*Original signed by*

Jennifer Lea  
Counsel, Special Projects