



EB-2015-0051

**Algoma Power Inc.**

**Application for electricity distribution rates and other  
charges effective January 1, 2016.**

**BEFORE:** Allison Duff  
Presiding Member

Victoria Christie  
Member

**DECISION ON APPEAL AND PROCEDURAL ORDER NO. 2  
November 5, 2015**

**Introduction and Summary**

The Algoma Coalition (Coalition) appeals the decision and order in Procedural Order No.1 denying the Coalition eligibility for costs in this proceeding.

Procedural Order No. 1 was issued by the Registrar of the Ontario Energy Board (OEB) on October 7, 2015. Therein, among other things, the Registrar granted intervenor status to the Vulnerable Energy Consumers Coalition (VECC) and the Coalition but determined that only VECC is eligible to apply for an award of costs under the OEB's *Practice Direction on Cost Awards* (in relation to Algoma Power Inc.'s rate design proposal for customers in the R1 class).

While the OEB finds no error with the Registrar's determinations as set out in Procedural Order No.1, the OEB will, in accordance with the findings and conditions set out below, hear further from the Coalition on the question of its eligibility for costs in this proceeding.

## The Process

Algoma Power Inc. (Algoma Power) applied under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) and under the OEB's filing requirements for incentive regulation rate applications seeking approval for changes to its electricity distribution rates to be effective January 1, 2016.

The OEB follows a standard, streamlined process for incentive regulation rate applications. In each hearing, the OEB's Notice and Procedural Order No. 1 are issued by the Registrar, who is an employee of the OEB with delegated authority pursuant to section 6 of the Act.

With regard to Procedural Order No. 1 in this proceeding, issued October 7, 2015, the Registrar denied the Coalition's request for cost eligibility.

On October 27, 2015, the Coalition appealed the Registrar's decision to deny it eligibility for costs. The appeal was improperly characterized by the Coalition as a "Notice of Motion" and this is discussed, in more detail, below.

This Decision and Procedural Order No. 2 sets out the OEB's findings on the appeal, and the procedural steps that flow from it.

## Findings

### i. Eligibility for Costs

The OEB finds that there is no error with the Registrar's determination that the Coalition is ineligible for an award of costs in this proceeding. In Procedural Order No. 1, the Registrar properly determined that the Coalition is, *prima facie*, ineligible for costs in this proceeding. As stated therein:

*Under section 3.05 (i) of the Practice Direction on Cost Awards, a municipality in Ontario, individually or in a group, is not eligible for an award of costs. As the Algoma Coalition represents the interests of a group of municipalities, I have therefore determined that the Algoma Coalition is not eligible to apply for an award of costs.*

The Coalition's letter of intervention, dated September 25, 2015, clearly states that the "Coalition consists of a number of municipalities" serviced by Algoma Power.

This same issue was dealt with by the OEB in proceeding EB-2012-0383 (Decision on Interventions and Cost Award Eligibility and Order, issued November 15, 2012).

Therein, the OEB stated:

*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 ... 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).*

The EB-2012-0383 proceeding related to a consultation concerned with determining the appropriate terminology and methodology for the allocation of costs to unmetered loads. It is worth noting that no municipality that independently requested intervenor status for that consultation also asked to be eligible for an award of costs. With regard to the one intervenor that represented a group of municipalities, the Board found that the consultation did not present a special circumstance for which it would grant cost eligibility. In denying the request for cost eligibility, the panel went on to say that the intervenor's interest in the consultation was "in the role of municipalities as representatives of ratepayers".

## ii. The “Motion”

On October 27, 2015, the Coalition filed its “Notice of Motion”. Notwithstanding the title of the filing, the OEB finds that it is an appeal from a decision made by a delegated authority under the authority of section 6 of the Act; in this case, the Registrar. Section 7 of the Act provides that a person directly affected by an order made by an employee of the Board pursuant to section 6 may, within 15 days after receiving notice of the order, appeal the order to the OEB.

The Coalition’s October 27 filing was made twenty-two days after issuance of the Registrar’s decision on cost eligibility, well beyond the 15 day limit for an appeal. It is possible the Coalition was unaware, from the wording of Procedural Order No. 1, that the Registrar is an employee of the OEB with delegated authority under section 6 of the Act.

The OEB finds that, even if viewed as a Motion to Review, the Coalition’s October 27 filing is deficient in that it does not address the threshold tests for motions. As set out in section 45.01 of the OEB’s *Rules of Practice and Procedure*:

*In respect of a motion brought under Rule 42.01, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits.*

Rule 44.01(a) provides the grounds upon which a motion may be raised with the Board:

*Every notice of motion made under Rule 42.01, in addition to the requirements under Rule 8.02, shall:*

*(a) Set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:*

- (i) Error in fact;
- (ii) Change in circumstances;
- (iii) New facts that have arisen;
- (iv) Facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time.

The threshold test was articulated in the OEB's decision on several motions filed in the *Natural Gas Electricity Interface Review Decision* (the "NGEIR Decision").

The Coalition's October 27 filing demonstrates no error, nor has the Coalition shown how the Registrar's findings are contrary to the evidence or that the Registrar failed to address a material issue or something of a similar nature.

Notwithstanding the Coalition's failure to appeal Procedural Order No. 1 within the time prescribed by the Act, in light of the circumstances of this particular case as outlined above, the OEB will hear further on the Coalition's request for cost eligibility in this hearing. Specifically, the OEB will provide the Coalition until 4 pm Friday, November 6, 2015, to more explicitly clarify the party or parties that it represents and to provide any other pertinent information in further support of its eligibility for costs in this proceeding.

The timelines established in Procedural Order No. 1 are also to be amended, accordingly. The panel considers it necessary to make provision for the following matters related to this proceeding, and may issue further procedural orders from time to time.

**IT IS THEREFORE ORDERED THAT:**

1. The Coalition may file with the OEB, in writing by **4:00 pm**, Friday **November 6, 2015**, a response to this Decision and Procedural Order No. 2, indicating:
  - i. how the Coalition receives direction in order to represent the interests of Algoma Power's R1 class and, in particular, shall address section 3.03 (a) of the *Practice Direction on Cost Awards*;
  - ii. the extent to which the Coalition is funded by the municipalities in Algoma Power's service territory.
2. If the Coalition files its response in accordance with order #1, above, the OEB will provide its decision on the Coalition's appeal for eligibility for cost awards on Monday **November 9, 2015**. If cost eligibility is ultimately approved, the Coalition will have the opportunity to provide a written submission on "Algoma Power's rate design proposal for customers in the R1 class".

3. If the Coalition does not file a response in accordance with order #1, above, then the Registrar's determination of the Coalition's cost eligibility in this proceeding, as stated in Procedural Order No.1, will remain unchanged.
4. The evidentiary record of this proceeding is closed. Specifically, there will be no further discovery process with regard to interrogatories or responses.
5. The due date for all submissions on the application will be extended from **November 6, 2015**, as originally set by Procedural Order No. 1, until Friday **November 13, 2015**.

All filings to the OEB must quote the file number, EB-2015-0051 and be made electronically in searchable/unrestricted PDF format through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:00 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Stephen Vetsis at [Stephen.Vetsis@ontarioenergyboard.ca](mailto:Stephen.Vetsis@ontarioenergyboard.ca) and OEB Counsel, Richard Lanni at [Richard.Lanni@ontarioenergyboard.ca](mailto:Richard.Lanni@ontarioenergyboard.ca).

**ADDRESS**

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**DATED** at Toronto, **November 5, 2015**

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary