

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, as amended;

AND IN THE MATTER OF an application made pursuant to section 86(2)(b) of the *Ontario Energy Board Act, 1998* by Hydro One Inc. for leave to purchase all issued and outstanding voting securities of Great Lakes Power Transmission Inc.

**B E T W E E N:**

**THE ALGOMA COALITION**

**Appellant  
(Intervenor)**

- and -

**KRISTI SEBALJ**

**Respondent  
(Registrar)**

- and -

**HYDRO ONE INC.**

**Respondent  
(Applicant)**

**NOTICE OF APPEAL**

May 27, 2016

1. The Appellant, the Algoma Coalition (the "Coalition") appeals under section 7 of the Ontario Energy Board Act (the "Act") from Procedural Order # 1 ("PO #1") made by Kristi Sebalj, Registrar, of the Ontario Energy Board (the "Board") under delegation and issued May 18, 2016 in EB-2016-0050.
2. A copy of PO #1 is attached as **Schedule "A"** and the relevant sections from the *Ontario Energy Board Rules of Practice and Procedure* (the "Rules"), *Practice Direction on*

*Cost Awards* (the Practice Direction”) and the Act are attached as **Schedules “B”, “C”, and “D”** respectively.

### **Requested Relief**

3. The Coalition asks for an Order:
    - a. cancelling that part of PO #1 (at pages 1–3) in which the Registrar denies the Coalition’s request for eligibility for costs as an intervenor;
    - b. approving the Coalition’s request for eligibility for costs in accordance with the Coalition’s April 19, 2016, Notice of Intervention;
    - c. staying enumerated items 2–4 of the Registrar’s order at page 5 of PO #1;
- or such further and other relief as the Coalition requests and the Board deems just.

### **Grounds for Appeal**

4. The Coalition (the Coalition), is comprised of a number of member municipalities each of which is both serviced by and a customer of Algoma Power Inc. (“API”) both North and East of Sault Ste. Marie.
5. On April 19, 2016, the Coalition filed its Notice of Intervention with the Ontario Energy Board (the “Board”) in respect of application EB-2016-0050. Specifically, through its Notice of Intervention, the Coalition applied for both intervenor status and cost eligibility.
  - a. ***The Registrar’s Decision and Findings in PO # 1***
6. In PO # 1 the Registrar granted the Coalition’s request for intervenor status, but denied its request for eligibility for costs.
7. The Registrar found that the Coalition satisfied section 3.03 of the Practice Direction because its members are direct customers of the applicant or are beneficiaries of its services.



8. Notwithstanding this finding, the Registrar found that the Coalition failed to provide any persuasive information as to why section 3.05(i) of the Practice Direction, which precludes Ontario municipalities, together or in a group, from cost eligibility.
9. Further, although finding that the Coalition had been granted eligibility for costs in proceedings after the Practice Direction was amended on March 19, 2012, to include section 3.05(i), the Registrar refused to follow these past decisions.
10. Finally, the Registrar found the Coalition's circumstances were not special or unique so as to justify the exercise of its discretion to grant the Coalition eligibility for cost under section 3.07.

***b. The Registrar's Errs***

11. The Registrar erred by considering section 3.05(i) in isolation from sections 3.04 and 3.06 of the Practice Direction.
12. In making a determination whether a party is eligible or ineligible for costs, section 3.04(d) functions to allow the Board to consider "any other factor the Board considers relevant to the public interest". The Registrar erred by not giving consideration to the public interest served by the Board hearing from a wide variety of affected interests especially those interests of Northern Ontario ratepayers who are isolated, marginalized, and lack the financial resources to individually participate. This is Coalition's *raison d'être*, namely to give voice to those who would otherwise be unrepresented before the Board and, in so doing, overcoming an important access to justice barrier. The Board's concern for reducing barriers to access is fundamental to its "Giving Ontario Energy Consumers a Stronger Voice" initiative. The stated goal of this initiative is "to empower Ontario's energy consumers by providing them with more opportunities to actively engage in the OEB's decision making process".
13. Further, given the Registrar's finding that the Coalition's members are direct customers of the applicant or are the beneficiaries of its services, the Registrar erred in failing to consider section 3.06. This section provides that "[n]otwithstanding section 3.05, a party which falls into one of the categories listed in section 3.05 *may be eligible for a cost award if it is a customer of the applicant*" (emphasis added). It should be noted that the Coalition also represents the interests of its members' ratepayers who are



themselves directly affected by this application and, therefore, an important stakeholder group for the purposes of this proceeding.


14. Similarly, the Registrar erred by failing to consider section 3.07, which provides that, in special circumstances a party that falls into one of the categories in section 3.05 is eligible for an award of costs. As noted in paragraph 11 above and in the Coalition's Notice of Intervention, its ability to intervene in Board proceeding depends entirely upon its ability to recover its associated costs. The Coalition's intervention is the only way its members' voices may be heard as its members' interests are not otherwise represented.
15. The fact that the Coalition has always participated responsibly in and brought a unique and valuable perspective to Board proceedings has never been disputed.
16. Denying the Coalition eligibility for costs and thereby excluding small Northern Ontario municipalities and their ratepayers from having a voice in this proceeding is contrary to both the Growth Plan for Northern Ontario (enacted under the *Places to Grow Act, 2005*) and section 2 of the Rules which provide that the Rules be "construed in the *public interest* to secure the most *just*, expeditious, and efficient determination on the merits of every proceeding before the Board" (emphasis added).
17. Specifically, the purpose of the Growth Plan for Northern Ontario is, *inter alia*, that the Provincial Government, businesses, municipalities, and other stakeholders, collaborate to enable decisions affecting northern communities be made "in ways that sustain a robust economy, build strong communities and promote a healthy environment and a culture of conservation". One of its guiding principles is delivering a network of infrastructure, including energy infrastructure, to support strong, vibrant northern communities. The Growth Plan for Northern Ontario recognizes that Northern Ontario is unique and calls for a new era of collaborative decision making to ensure northerners' future prosperity. As noted above, the Coalition submits that its intervention is essential to ensure northerners' collective voice is heard in this application and the only way this can occur is if it is granted cost eligibility.
18. In addition, the rigid application of section 3.05 evinces bias on the part of the Registrar in making her decision to deny the Coalition cost eligibility. As an employee of the Board, the Registrar is undoubtedly aware that the Coalition has an active judicial review application on this same issue in respect of the Board's February 5, 2016



decision in EB-2015-0051. On this basis, the Coalition submits the Registrar failed to act impartially and that her decision was an unfair or malicious abuse of discretion.

19. This Notice of Appeal has been prepared in accordance with the requirements set out in Rule 17.
20. The Coalition requests that the Board proceed by way of a written hearing pursuant to Rule 32.01.

DATED at Sault Ste. Marie, Ontario this 27<sup>th</sup> day of May, 2016

PER:   
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AND  
TO:

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## **SCHEDULE "A"**





**EB-2016-0050**

**Hydro One Inc.**

**Application for approval to purchase Great Lakes  
Power Transmission Inc.**

**PROCEDURAL ORDER NO. 1  
May 18, 2016**

Hydro One Inc. (Hydro One) filed a complete application with the Ontario Energy Board (OEB) on March 18, 2016 under section 86(2)(b) of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, (Schedule B), seeking approval to purchase the voting shares of Great Lakes Power Transmission Inc.

A Notice of Hearing was issued on April 7, 2016. Each of School Energy Coalition (SEC), Power Workers' Union (PWU), Algoma Coalition and Vulnerable Energy Consumers Coalition (VECC) applied for intervenor status. Late intervention requests were filed by Energy Probe Research Foundation (Energy Probe) and Association of Major Power Consumers in Ontario (AMPCO). Algoma Coalition requested an oral hearing but did not provide reasons for its request.

SEC, Algoma Coalition, VECC, Energy Probe and AMPCO also applied for cost eligibility. No objection was received from Hydro One.

SEC, PWU, Algoma Coalition, VECC, Energy Probe and AMPCO are approved as intervenors. The list of parties in this proceeding is attached as Schedule A to this Procedural Order. I have also determined that SEC, VECC, Energy Probe and AMPCO are eligible to apply for an award of costs under the OEB's Practice Direction on Cost Awards (Practice Direction).

The request for cost eligibility of Algoma Coalition is denied. The OEB notes that the burden of establishing eligibility for a cost award is on the party applying for such



eligibility, in this case, Algoma Coalition. The request for cost eligibility must include the reasons as to why the party believes that it is eligible for an award of costs and address the OEB's cost eligibility criteria.

Section 3.03 of the Practice Direction states that a party is eligible to apply for a cost award where the party:

- (a) primarily represents the direct interests of consumers (i.e., ratepayers in relation to services that are regulated by the Board);
- (b) primarily represents an interest or policy perspective relevant to the Board's mandate and to the proceeding for which cost award eligibility is sought; or
- (c) is a person with an interest in land that is affected by the process.

Section 3.05 (i) of the Practice Direction states that despite section 3.03, a municipality in Ontario, individually or in a group, is not eligible for a cost award.

Algoma Coalition's Notice of Intervention does not provide a list of its members. It does state that the intervention will focus on representation of the interests of Northern Ontario Municipalities and their ratepayers and Mr. Christopher Wray, the CAO/Clerk-Treasurer of the Municipality of Wawa is listed as Algoma Coalition's member liaison. Algoma Coalition's submissions in previous OEB proceedings have indicated that its members are small Northern Ontario municipalities.

Algoma Coalition says in its Notice of Intervention that its members are direct customers of the applicant or are beneficiaries of its services. In so doing, Algoma Coalition has addressed section 3.03 of the Practice Direction; however, it has not provided any persuasive information as to why section 3.05(i) of the Practice Direction should not apply.

The OEB finds that it would be both inconsistent and inappropriate to allow Algoma Coalition cost eligibility on the basis that the municipalities that it represents are customers and not afford all Ontario municipalities the same treatment. To do this would be to circumvent the clear language of section 3.05(i) of the Practice Direction so as to render the section ineffective.

Algoma Coalition also states in its Notice of Intervention that its ability to intervene in OEB proceedings depends entirely upon its ability to recover its associated costs. The OEB has, however, previously addressed this issue in EB-2012-0383 wherein it 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.*

The Algoma Coalition, as an association of member municipalities, has access to funding from each of its constituent member taxpayer revenue streams and should not therefore, be eligible to recover costs from the ratepayers.

Finally, the OEB has considered whether, under section 3.07 of the Practice Direction, special circumstances exist and concludes that no circumstances exist that are special or unique in this particular case.

Algoma Coalition cites in its Notice of Intervention a list of previous OEB proceedings in which it has intervened and for which it has been found eligible for an award of costs. The OEB does not, however, find this to be persuasive, for the following reasons. First, the Practice Direction was amended in March of 2012 to, in part, specifically include section 3.05(i) and, with limited exceptions, the proceedings cited by Algoma Coalition for which it was found to be cost eligible pre-date that amendment. Second, in relation to proceedings subsequent to the amendment for which Algoma Coalition was found to be cost eligible, those decisions were made in the context of the applications being heard in those proceedings.

Cost eligible intervenors should be aware that the OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party, unless a compelling reason is provided when cost claims are filed.

The OEB will determine later in the process whether an oral hearing is required in this case.

### **Confidentiality Requests**

Hydro One has made two requests for confidentiality.

In accordance with section 5.1.4 of the OEB's Practice Direction on Confidential Filings, Hydro One filed a request for confidentiality relating to information that it says is commercially sensitive contained in the Share Purchase Agreement (SPA), filed as part of the application. Hydro One also seeks confirmation, in accordance with section 4.3.1 of the Practice Direction on Confidential Filings, that certain identified personal information also contained in the SPA will not be disclosed in this proceeding. Hydro



One filed a non-confidential redacted version of the SPA and a cover letter setting out its reasons for the confidentiality requests. Hydro One also filed two confidential unredacted versions of the SPA - one reflecting the commercially sensitive information and another fully unredacted version, reflecting both the commercially sensitive information and the personal information.

As an interim measure, the OEB will allow any parties that wish to review the confidential information that Hydro One says is commercially sensitive to do so after signing a copy of the OEB's Declaration and Undertaking, and filing it with the OEB. The OEB will not allow any parties to review the identified personal information filed in confidence until the OEB has determined whether the disclosure of the personal information is permitted under the *Freedom of Information and Protection of Privacy Act*.

The Practice Direction on Confidential Filings permits any party to a proceeding to object to the requests for confidentiality by filing a written objection. This Procedural Order addresses the process for receiving such objections. Subsequent to any and all submissions received pursuant to this Procedural Order, the OEB will make its findings with respect to Hydro One's claims for confidentiality.

### **Interrogatories**

At this time, I am making provision for written interrogatories.

Parties should not engage in detailed exploration of items that do not appear to be relevant and material to the OEB's review of a consolidation application. Parties should refer to the OEB's Handbook to Electricity Distributor and Transmitter Consolidations, for what the OEB considers in its review, in developing interrogatories. In making its decision on cost awards, the OEB will consider whether intervenors made reasonable efforts to ensure that their participation in the hearing was focused on material issues.

Parties should consult sections 26 and 27 of the OEB's Rules of Practice and Procedure regarding required naming and numbering conventions and other matters related to interrogatories.

I consider it necessary to make provision for the following matters related to this proceeding.

**IT IS THEREFORE ORDERED THAT:**

1. OEB staff and intervenors may make written submissions concerning Hydro One's confidentiality requests. Any such submissions must be filed with the OEB and delivered to Hydro One and all intervenors by **May 25, 2016**.
2. Hydro One shall file with the OEB and deliver to all intervenors any reply submissions relating to the confidentiality requests by **June 1, 2016**.
3. OEB staff and intervenors shall request any relevant information and documentation from Hydro One that is in addition to the evidence already filed, by written interrogatories filed with the OEB and served on all parties by **June 6, 2016**.
4. Hydro One shall file with the OEB complete written responses to all interrogatories and serve them on all intervenors and OEB staff by **June 20, 2016**.

All filings to the OEB must quote the file number, EB-2016-0050, be made in searchable/ unrestricted PDF format electronically 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 4:45 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, Judith Fernandes at [judith.fernandes@ontarioenergyboard.ca](mailto:judith.fernandes@ontarioenergyboard.ca) and Maureen Helt at [maureen.helt@ontarioenergyboard.ca](mailto:maureen.helt@ontarioenergyboard.ca).



**ADDRESS**

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**DATED** at Toronto, May 18, 2016

**ONTARIO ENERGY BOARD**

**By delegation, before: Kristi Sebalj**

*Original signed by*

Kristi Sebalj  
Registrar

**SCHEDULE A**  
**PROCEDURAL ORDER NO. 1**  
**LIST OF PARTIES**  
**HYDRO ONE INC.**  
**EB-2016-0050**  
**May 18, 2016**



Hydro One Inc.  
EB-2016-0050

## **APPLICANT & LIST OF INTERVENORS**

May 18, 2016

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### **APPLICANT**

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**APPLICANT & LIST OF INTERVENORS**

May 18, 2016

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**APPLICANT & LIST OF INTERVENORS**

May 18, 2016

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Hydro One Inc.  
EB-2016-0050

**APPLICANT & LIST OF INTERVENORS**

May 18, 2016

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**APPLICANT & LIST OF INTERVENORS**

May 18, 2016

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Hydro One Inc.  
EB-2016-0050

**APPLICANT & LIST OF INTERVENORS**

May 18, 2016

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## **SCHEDULE "B"**



# **ONTARIO ENERGY BOARD**

## **Rules of Practice and Procedure**

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012,  
January 17, 2013 and April 24, 2014)

### **PART I - GENERAL**

#### **1. Application and Availability of Rules**

- 1.01 These Rules apply to proceedings before the Board except enforcement proceedings. These Rules, other than the Rules set out in Part VII, also apply, with such modifications as the context may require, to all proceedings to be determined by an employee acting under delegated authority.
- 1.02 These Rules, in English and in French, are available for examination on the Board's website, or upon request from the Board Secretary.
- 1.03 The Board may dispense with, amend, vary or supplement, with or without a hearing, all or part of any Rule at any time, if it is satisfied that the circumstances of the proceeding so require, or it is in the public interest to do so.

#### **2. Interpretation of Rules**

- 2.01 These Rules shall be liberally construed in the public interest to secure the most just, expeditious, and efficient determination on the merits of every proceeding before the Board.
- 2.02 Where procedures are not provided for in these Rules, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.
- 2.03 These Rules shall be interpreted in a manner that facilitates the introduction and use of electronic regulatory filing and, for greater certainty, the introduction and use of digital communication and storage media.
- 2.04 Unless the Board otherwise directs, any amendment to these Rules comes into force upon publication on the Board's website.

#### **3. Definitions**

- 3.01 In these Rules,  
  
"affidavit" means written evidence under oath or affirmation;

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012,  
January 17, 2013 and April 24, 2014)

### 17. Appeals

17.01 An "appeal" means:

- (a) an appeal under section 7 of the *OEB Act*;
- (b) a review under section 59(6) of the *OEB Act*;
- (c) a review of an amendment to the market rules under section 33 or section 34 of the *Electricity Act*;
- (d) a review of a provision of the market rules under section 35 of the *Electricity Act*;
- (e) an appeal under section 36, 36.1 or 36.3 of the *Electricity Act*;
- (f) a review of a reliability standard under section 36.2 of the *Electricity Act*; and
- (g) an appeal under section 7(4) of the *Toronto District Heating Corporation Act, 1998*.

17.02 A notice of appeal shall contain:

- (a) the portion of the order, decision, market rules, reliability standard or finding or remedial action referred to in **Rule 15.03** being appealed;
- (b) the statutory provision under which the appeal is made;
- (c) the nature of the relief sought, and the grounds on which the appellant shall rely;
- (d) if an appeal of an order made under the market rules under section 36 of the *Electricity Act*, a statement confirming that the appellant has made use of any dispute resolution provisions of the market rules;
- (e) if an application by a market participant for review of a provision of the market rules under section 35 of the *Electricity Act*, a statement confirming that the market participant has made use of any review provisions of the market rules; and



# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012, January 17, 2013 and April 24, 2014)

- (f) if an appeal of an order, finding or remedial action under section 36.3 of the *Electricity Act*, a statement confirming that the Independent Electricity System Operator has commenced all other reviews and appeals available to it and such reviews and appeals have been finally determined.
- 17.03 A notice of appeal shall be in such form as may be approved or specified by the Board and shall be accompanied by such fee as may be set for that purpose by the management committee under section 12.1(2) of the *OEB Act*.
- 17.04 At a hearing of an appeal, an appellant shall not seek to appeal a portion of the order, decision, market rules, reliability standard or finding or remedial action referred to in **Rule 15.03** or rely on any ground, that is not stated in the appellant's notice of appeal, except with leave of the Board.
- 17.05 In addition to those persons on whom service is required by statute, the Board may direct an appellant to serve the notice of appeal on such persons as it considers appropriate.
- 17.06 The Board may require an appellant to file an affidavit of service indicating how and on whom service of the notice of appeal was made.
- 17.07 Subject to **Rule 17.08**, a request by a party to stay part or all of the order, Decision, market rules, reliability standard or finding or remedial action referred to in **Rule 15.03** being appealed pending the determination of the appeal shall be made by motion to the Board.
- 17.08 For greater certainty, a request to stay shall not be made where a stay is precluded by statute.
- 17.09 In respect of a motion brought under **Rule 17.07**, the Board may order that implementation or operation of the order, decision, market rules or reliability standard be delayed or stayed, on conditions as it considers appropriate.



# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012, January 17, 2013 and April 24, 2014)

- (g) deciding any other matter that may aid in the simplification or the just and most expeditious disposition of the proceeding.

31.02 The Board Chair may designate one member of the Board or any other person to preside at a pre-hearing conference.

31.03 A member of the Board who presides at a pre-hearing conference may make such orders as he or she considers advisable with respect to the conduct of the proceeding, including adding parties.

## PART V - HEARINGS

### 32. Hearing Format and Notice

32.01 In any proceeding, the Board may hold an oral, electronic or written hearing, subject to the *Statutory Powers Procedure Act* and the statute under which the proceeding arises.

32.02 The format, date and location of a hearing shall be determined by the Board.

32.03 Subject to **Rule 21.02**, the Board shall provide written notice of a hearing to the parties, and to such other persons or class of persons as the Board considers necessary.

### 33. Hearing Procedure

33.01 Parties to a hearing shall comply with any directions issued by the Board in the course of the proceeding.

### 34. Summons

34.01 A party who requires the attendance of a witness or production of a document or thing at an oral or electronic hearing may obtain a Summons from the Board Secretary.

34.02 Unless the Board directs otherwise, the Summons shall be served personally and at least 48 hours before the time fixed for the attendance of the witness or production of the document or thing.

## **SCHEDULE "C"**



# ONTARIO ENERGY BOARD

Practice Direction

On

Cost Awards

Revised April 24, 2014



**ONTARIO ENERGY BOARD**  
**PRACTICE DIRECTION ON COST AWARDS**

**1. DEFINITIONS**

1.01 In this Practice Direction, words have the same meaning as in the *Ontario Energy Board Act, 1998* or the Ontario Energy Board's Rules of Practice and Procedure, unless otherwise defined in this section.

"Act" means the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B;

"applicant" means:

- (a) when used in connection with a process commenced by an application to the Board, the person(s) who make(s) an application;
- (b) when used in connection with a process commenced by reference, Order in Council, or on the Board's own initiative, the person(s) named by the Board to be the applicant; and
- (c) when used in connection with a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, the person(s) from whom cost awards will be recovered in relation to the process, as determined by the Board;

"intervenor", in respect of a proceeding, means a person who has been granted intervenor status by the Board and, in respect of a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, means a person who is participating in that process, and "intervention" shall be interpreted accordingly;

"municipality" has the same meaning as in the *Municipal Act, 2001*, S.O. 2001, c.25;

"party" means an applicant, an intervenor and any other person participating in a Board process;

"person" includes (i) an individual; (ii) a company, sole proprietorship, partnership, trust, joint venture, association, corporation or other private or public body corporate; and (iii) an unincorporated association or organization;

"process" means a process to decide a matter brought before the Board whether commenced by application, reference, Order in Council, notice of appeal or on the Board's own initiative, and includes a notice and comment process under section 45 or 70.2 of the Act and any other consultation process initiated by the Board;

"Tariff" means the Cost Award Tariff contained in Appendix A to this Practice Direction;

"*Travel, Meal and Hospitality Expenses Directive*" means the Ministry of Government Services, Management Board of Cabinet, *Travel, Meal and Hospitality Expenses Directive*,



dated April 1, 2010, as may be revised from time to time; and

“wholesaler” means a person who purchases electricity or ancillary services in the IESO-administered markets or directly from a generator or who sells electricity or ancillary services through the IESO-administered markets or directly to another person, other than a consumer.

## **2. COST POWERS**

2.01 The Board may order any one or more of the following:

- (a) by whom and to whom any costs are to be paid;
- (b) the amount of any costs to be paid or by whom any costs are to be assessed and allowed;
- (c) when any costs are to be paid;
- (d) costs against a party; and
- (e) the costs of the Board to be paid by a party or parties.

2.02 The timelines set out in this Practice Direction shall apply unless, at any stage in a particular process, the Board determines or orders otherwise.

## **3. COST ELIGIBILITY**

3.01 The Board may determine whether a party is eligible or ineligible for a cost award.

3.02 The burden of establishing eligibility for a cost award is on the party applying for a cost award.

3.03 A party in a Board process is eligible to apply for a cost award where the party:

- (a) primarily represents the direct interests of consumers (e.g. ratepayers) in relation to services that are regulated by the Board;
- (b) primarily represents an interest or policy perspective relevant to the Board’s mandate and to the proceeding for which cost award eligibility is sought; or
- (c) is a person with an interest in land that is affected by the process.

3.03.1 A party that frequently applies for intervenor status and cost award eligibility in Board proceedings shall file with the Board, at least annually, the following information about the party:

- (a) its mandate and objectives;
- (b) its membership and the constituency it represents;
- (c) the types of programs or activities that the party carries out;
- (d) the identity of the individual(s) that represent the party in Board proceedings;
- (e) any other information that could be relevant to the Board’s consideration of the party’s application for intervenor status and cost award eligibility; and
- (f) updates to any information previously filed.



3.04 In making a determination whether a party is eligible or ineligible, the Board may:

- (a) in the case of a party that is an association or other form of organization comprised of two or more members, have regard to whether the individual members would themselves be eligible or ineligible;
- (b) in the case of a party that is a commercial entity, have regard to whether the entity primarily represents its own commercial interest (other than as a ratepayer), even if the entity may be in the business of providing services that can be said to serve an interest or policy perspective relevant to the Board's mandate and to the proceeding for which cost eligibility is sought;
- (c) in the case of a party that frequently applies for intervenor status and cost award eligibility in Board proceedings, have regard to whether the party has conformed with section 3.03.1 of this *Practice Direction*; and
- (d) also consider any other factor the Board considers to be relevant to the public interest.

3.05 Despite section 3.03, the following parties are not eligible for a cost award:

- (a) an applicant;
- (b) an electricity transmitter, wholesaler, generator, distributor, retailer, and unit sub-meter provider, either individually or in a group;
- (c) a gas transmitter, gas distributor, gas marketer and storage company, either individually or in a group;
- (d) the Independent Electricity System Operator;
- (e) the Ontario Power Authority;
- (f) the Smart Metering Entity;
- (g) the government of Canada (including a department), and any agency, Crown corporation or special operating agency listed in a schedule to the *Financial Administration Act* (Canada) that has not at the relevant time been privatized;
- (h) the government of Ontario (including a ministry), and any public body or Commission public body listed in Table 1 of Ontario Regulation 146/10 (Public Bodies and Commission Public Bodies – Definitions) made under the *Public Service of Ontario Act, 2006* (Ontario);
- (i) a municipality in Ontario, individually or in a group;
- (j) a conservation authority established by or under the *Conservation Authorities Act* (Ontario) or a predecessor of that *Act*, individually or in a group;
- (k) a corporation, with or without share capital, owned or controlled by the government of Canada, the government of Ontario or a municipality in Ontario; and
- (l) a person that owns or has a controlling interest in a person listed in (a), (b) or (c) above.

For the purposes of paragraph (k), control has the same meaning as in the *Business Corporations Act* (Ontario).

For the purposes of paragraph (l): (i) a person has a controlling interest in another person listed in (a), (b) or (c) that is a limited partnership if the person is a general partner; (ii) a person has a controlling interest in another person listed in (a), (b) or (c) that is any other form of partnership if the person is a partner; and (iii) a person



has a controlling interest in another person listed in (a), (b) or (c) that is a corporation if the person controls the corporation or controls a corporation that holds 100 percent of the voting securities of the first-mentioned corporation, control having the same meaning as in the *Business Corporations Act* (Ontario).

- 3.06 Notwithstanding section 3.05, a party which falls into one of the categories listed in section 3.05 may be eligible for a cost award if it is a customer of the applicant.
- 3.07 Also notwithstanding section 3.05, the Board may, in special circumstances, find that a party which falls into one of the categories listed in section 3.05 is eligible for a cost award in a particular process.
- 3.08 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.

#### **4. COST ELIGIBILITY PROCESS**

- 4.01 A party that will be requesting costs must make a request for cost eligibility that includes the reasons as to why the party believes that it is eligible for an award of costs, addressing the Board's cost eligibility criteria (see section 3). The request for cost eligibility shall be filed as part of the party's letter of intervention or, in the case of a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, shall be filed by the date specified by the Board for that purpose. For information on filing and serving a letter of intervention, refer to the Board's Rules of Practice and Procedure.
- 4.02 An applicant in a process will have 10 calendar days from the filing of the letter of intervention or request for cost eligibility, as applicable, to submit its objections to the Board, after which time the Board will rule on the request for eligibility.
- 4.03 The Board may at any time seek further information and clarification from any party that has filed a request for cost eligibility or objected to such a request, and may provide direction in respect of any matter that the Board may consider in determining the amount of a cost award, and, in particular, combining interventions and avoiding duplication of evidence or interventions.
- 4.04 A direction mentioned in section 4.03 may be taken into account in determining the amount of a cost award under section 5.01.

#### **5. CONSIDERATIONS IN AWARDING COSTS**

- 5.01 In determining the amount of a cost award to a party, the Board may consider, amongst other things, whether the party has demonstrated through its participation and documented in its cost claim that it has:
  - (a) participated responsibly in the process;
  - (b) contributed to a better understanding by the Board of one or more of the issues in the process;

## **SCHEDULE "D"**



(2) The members of the Board are not its employees, and the chair and vice-chairs shall not hold any other office in the Board or be employed by it in any other capacity. 2003, c. 3, s. 12.

#### **Conflict of interest, indemnification**

(3) Sections 132 (conflict of interest) and 136 (indemnification) of the *Business Corporations Act* apply with necessary modifications with respect to the Board as if the Minister were its sole shareholder. 2003, c. 3, s. 12.

#### **Agreement for services**

(4) The Board and a ministry of the Crown may enter into agreements for the provision by employees of the Crown of any service required by the Board to carry out its duties and powers, and the Board shall pay the agreed amount for services provided to it. 2003, c. 3, s. 12.

#### **Section Amendments with date in force (d/m/y) [ + ]**

#### **Chief operating officer and secretary**

5. The Board's management committee shall appoint a chief operating officer of the Board and a secretary of the Board from among the Board's employees. 2003, c. 3, s. 13.

#### **Section Amendments with date in force (d/m/y) [ + ]**

#### **Delegation of Board's powers and duties**

6. (1) The Board's management committee may in writing delegate any power or duty of the Board to an employee of the Board. 2003, c. 3, s. 13.

#### **Exceptions**

(2) Subsection (1) does not apply to the following powers and duties:

1. Any power or duty of the Board's management committee.
2. The power to make rules under section 44.
3. The power to issue codes under section 70.1.
4. The power to make rules under section 25.1 of the *Statutory Powers Procedure Act*.
5. Hearing and determining an appeal under section 7 or a review under section 8.
6. The power to make an order against a person under section 112.3, 112.4 or 112.5, if the person gives notice requiring the Board to hold a hearing under section 112.2.
7. A power or duty prescribed by the regulations. 2003, c. 3, s. 13.

#### **Conditions and restrictions**

(3) A delegation under this section is subject to such conditions and restrictions as the management committee may specify in writing. 2003, c. 3, s. 13.

#### **No hearing**

(4) An employee of the Board may exercise powers and duties that are delegated under this section without holding a hearing. 2003, c. 3, s. 13.

#### **Statutory Powers Procedure Act**

(5) If an employee of the Board holds a hearing pursuant to this section, the *Statutory Powers Procedure Act* applies to the same extent as if members of the Board were holding the hearing. 2003, c. 3, s. 13.

#### **Review by employee**

(6) An employee of the Board who makes an order pursuant to this section may, within a reasonable time after the order is made and if he or she considers it advisable, review all or part of the order, and may confirm, vary or cancel the order. 2003, c. 3, s. 13.

#### **Transfer to Board**

(7) At any time before an employee of the Board makes an order in respect of a matter pursuant to this section, the management committee may direct that the matter be transferred to the Board for determination. 2003, c. 3, s. 13.

#### **Effect of employees' orders, etc.**

(8) Anything done by an employee of the Board pursuant to this section shall be deemed, for the purpose of this or any other Act, to have been done by the Board. 2003, c. 3, s. 13.

#### **Application of s. 33**

(9) Despite subsection (8), section 33 and subsection 38 (4) do not apply to an order made by an employee of the Board pursuant to this section. 2003, c. 3, s. 13; 2009, c. 33, Sched. 2, s. 51 (1).

#### **Section Amendments with date in force (d/m/y) [ + ]**

#### **Appeal from delegated function**

7. (1) 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 Board. 2003, c. 3, s. 13.

#### **Exception**

(2) Subsection (1) does not apply to,



- (a) a person who did not make submissions to the employee after being given notice of the opportunity to do so; or
- (b) a person who did not give notice requiring the Board to hold a hearing under section 112.2, in the case of an order made by the employee under section 112.3, 112.4 or 112.5. 2003, c. 3, s. 13.

**Parties**

(3) The parties to the appeal are:

- 1. The appellant.
- 2. The applicant, if the order is made in a proceeding commenced by an application.
- 3. The employee who made the order.
- 4. Any other person added as a party by the Board. 2003, c. 3, s. 13.

**Powers of Board**

(4) The Board may confirm, vary or cancel the order. 2003, c. 3, s. 13.

**Stay**

(5) An appeal under this section does not stay the order of the employee, unless the Board orders otherwise. 2003, c. 3, s. 13.

**Section Amendments with date in force (d/m/y) [ + ]****Review of delegated function**

9. (1) The Board's management committee may, on its own motion, within 15 days after the making of an order by an employee of the Board pursuant to section 6, direct the Board to review the order. 2003, c. 3, s. 13.

**Parties**

(2) The parties to the review are:

- 1. Every person directly affected by the order, including, if the order is made in a proceeding commenced by an application, the applicant.
- 2. The employee who made the order.
- 3. Any other person added as a party by the Board. 2003, c. 3, s. 13.

**Exception**

(3) Despite paragraph 1 of subsection (2), a person is not a party to the review if the person did not make submissions to the employee after being given notice of the opportunity to do so. 2003, c. 3, s. 13.

**Application of subss. 7 (4) and (5)**

(4) Subsections 7 (4) and (5) apply, with necessary modifications, to a review under this section. 2003, c. 3, s. 13.

**Section Amendments with date in force (d/m/y) [ + ]****Power to administer oaths**

9. The secretary of the Board and an inspector appointed under section 106 has, in carrying out his or her duties under this Act, the same powers as a commissioner for taking affidavits in Ontario. 2003, c. 3, s. 14.

**Section Amendments with date in force (d/m/y) [ + ]****Not required to testify**

10. Members of the Board and employees of the Board are not required to give testimony in any civil proceeding with regard to information obtained in the discharge of their official duties. 1998, c. 15, Sched. B, s. 10.

**Liability**

11. (1) No action or other civil proceeding shall be commenced against any of the following persons for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act or regulation or for any neglect or default in the exercise or performance in good faith of such a power or duty:

- 1. A member of the Board.
- 2. An officer, employee or agent of the Board.
- 3. A member of the Market Surveillance Panel.
- 4. An officer, employee or agent of the IESO acting on behalf of the Market Surveillance Panel. 2004, c. 23, Sched. B, s. 6.

**Same**

(2) A member of the Board is not liable for an act, an omission, an obligation or a liability of the Board or its employees. 2003, c. 3, s. 15.

**Crown liability**

(3) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsections (1) and (2) do not relieve the Crown of any liability to which it would otherwise be subject in respect of a tort committed by any person referred to in subsection (1) or (2). 2003, c. 3, s. 15.

**Section Amendments with date in force (d/m/y) [ + ]**



- (a) may require the Board to prepare specified information, including preparing the information in languages specified in the directive, and to do so within the time specified in the directive; and
- (b) may require that the Board require that gas marketers or retailers of electricity or specified classes of them,
  - (i) use the information in the manner specified in the directive, and
  - (ii) take such steps as may be specified in the directive to ensure that persons engaged by them in activities related to verification use the information in the manner specified in the directive. 2010, c. 8, s. 38 (3).

#### **Audit and investigation**

(6) A directive issued under this section may require the Board to,

- (a) exercise its authority under Part V.1 to audit the records and information of the gas marketer or retailer of electricity specified in the directive, in such manner as is specified in the directive;
- (b) exercise its authority under Part VII to inspect the activities or conduct of the gas marketers or retailers of electricity or the classes of gas marketers or retailers of electricity, as are specified in the directive, in relation to compliance with this Act or its regulations;
- (c) exercise its authority under Part VII to undertake random inspections of the activities or conduct, as are specified in the directive, of the gas marketers or retailers of electricity specified in the directive, in relation to compliance with this Act or its regulations;
- (d) exercise its authority under Part VII.0.1 to investigate the activities or conduct or the classes of activities or conduct, as are specified in the directive, of gas marketers or retailers of electricity generally or of the classes of gas marketers or retailers of electricity as are specified in the directive, in relation to compliance with this Act or its regulations;
- (e) exercise its authority under Part VII.0.1 to investigate the number or percentage, as is specified in the directive, of complaints received by the Board against gas marketers or retailers of electricity and reasonably considered by the Board to have merit, in relation to compliance with this Act or its regulations. 2010, c. 8, s. 38 (3).

#### **Publication**

(7) A directive issued under this section shall be published in *The Ontario Gazette*. 2010, c. 8, s. 38 (3).

#### **No hearing**

(8) The Board shall amend the conditions as required by a directive without holding a hearing. 2010, c. 8, s. 38 (3).

#### **Section Amendments with date in force (d/m/y) [ + ]**

#### **Refrain from exercising power**

29. (1) On an application or in a proceeding, the Board shall make a determination to refrain, in whole or part, from exercising any power or performing any duty under this Act if it finds as a question of fact that a licensee, person, product, class of products, service or class of services is or will be subject to competition sufficient to protect the public interest. 1998, c. 15, Sched. B, s. 29 (1).

#### **Scope**

(2) Subsection (1) applies to the exercise of any power or the performance of any duty of the Board in relation to,

- (a) any matter before the Board;
- (b) any licensee;
- (c) any person who is subject to this Act;
- (d) any person selling, transmitting, distributing or storing gas; or
- (e) any product or class of products supplied or service or class of services rendered within the province by a licensee or a person who is subject to this Act. 1998, c. 15, Sched. B, s. 29 (2).

#### **Where determination made**

(3) For greater certainty, where the Board makes a determination to refrain in whole or in part from the exercise of any power or the performance of any duty under this Act, and does so refrain, nothing in this Act limits the application of the *Competition Act* (Canada) to those matters with respect to which the Board refrains. 1998, c. 15, Sched. B, s. 29 (3).

#### **Notice**

(4) Where the Board makes a determination under this section, it shall promptly give notice of that fact to the Minister. 1998, c. 15, Sched. B, s. 29 (4).

#### **Costs**

30. (1) The Board may order a person to pay all or part of a person's costs of participating in a proceeding before the Board, a notice and comment process under section 45 or 70.2 or any other consultation process initiated by the Board. 2004, c. 23, Sched. B, s. 8.

#### **Same**

(2) The Board may make an interim or final order that provides,

- (a) by whom and to whom any costs are to be paid;
- (b) the amount of any costs to be paid or by whom any costs are to be assessed and allowed; and

(c) when any costs are to be paid. 2003, c. 3, s. 25 (1).

#### Rules

(3) The rules governing practice and procedure that are made under section 25.1 of the *Statutory Powers Procedure Act* may prescribe a scale under which costs shall be assessed. 2003, c. 3, s. 25 (1).

#### Inclusion of Board costs

(4) The costs may include the costs of the Board, regard being had to the time and expenses of the Board. 1998, c. 15, Sched. B, s. 30 (4).

#### Considerations not limited

(5) In awarding costs, the Board is not limited to the considerations that govern awards of costs in any court. 1998, c. 15, Sched. B, s. 30 (5).

#### Application

(6) This section applies despite section 17.1 of the *Statutory Powers Procedure Act*. 2003, c. 3, s. 25 (2).

#### Section Amendments with date in force (d/m/y) [ + ]

31. (1) REPEALED: 2002, c. 1, Sched. B, s. 5.

(2) REPEALED: 2003, c. 3, s. 26.

#### Section Amendments with date in force (d/m/y) [ + ]

#### Stated case

32. (1) The Board may, at the request of the Lieutenant Governor in Council or of its own motion or upon the motion of any party to proceedings before the Board and upon such security being given as it directs, state a case in writing for the opinion of the Divisional Court upon any question that is a question of law within the jurisdiction of the Board. 1998, c. 15, Sched. B, s. 32 (1); 2003, c. 3, s. 27.

#### Same

(2) The Divisional Court shall hear and determine the stated case and remit it to the Board with its opinion. 1998, c. 15, Sched. B, s. 32 (2).

#### Section Amendments with date in force (d/m/y) [ + ]

#### Appeal to Divisional Court

33. (1) An appeal lies to the Divisional Court from,

- (a) an order of the Board;
- (b) the making of a rule under section 44; or
- (c) the issuance of a code under section 70.1. 2003, c. 3, s. 28 (1).

#### Nature of appeal, timing

(2) An appeal may be made only upon a question of law or jurisdiction and must be commenced not later than 30 days after the making of the order or rule or the issuance of the code. 1998, c. 15, Sched. B, s. 33 (2); 2003, c. 3, s. 28 (2).

#### Board may be heard

(3) The Board is entitled to be heard by counsel upon the argument of an appeal. 1998, c. 15, Sched. B, s. 33 (3).

#### Board to act on court's opinion

(4) The Divisional Court shall certify its opinion to the Board and the Board shall make an order in accordance with the opinion, but the order shall not be retroactive in its effect. 1998, c. 15, Sched. B, s. 33 (4).

#### Board not liable for costs

(5) The Board, or any member of the Board, is not liable for costs in connection with any appeal under this section. 1998, c. 15, Sched. B, s. 33 (5).

#### Order to take effect despite appeal

(6) Subject to subsection (7), every order made by the Board takes effect at the time prescribed in the order, and its operation is not stayed by an appeal, unless the Board orders otherwise. 2006, c. 33, Sched. X, s. 1.

#### Court may stay the order

(7) The Divisional Court may, on an appeal of an order made by the Board,

- (a) stay the operation of the order; or
- (b) set aside a stay of the operation of the order that was ordered by the Board under subsection (6). 2006, c. 33, Sched. X, s. 1.

#### Section Amendments with date in force (d/m/y) [ + ]

#### No petition to Lieutenant Governor in Council

##### Definition

34. (1) In this section,

"old section 34" means this section as it read immediately before the day the *Good Government Act, 2009* received Royal Assent. 2009, c. 33, Sched. 2, s. 51 (2).