

SUPPLEMENTARY DECISION ON COST ELIGIBILITY

EB-2018-0287 & EB-2018-0288

**Utility Remuneration and Responding to Distributed Energy
Resources**

**By Delegation Before: Brian Hewson
Vice President, Consumer Protection &
Industry Policy**

September 9, 2019

On March 15, 2019, the Ontario Energy Board (OEB) issued a [letter](#) initiating two integrated consultation processes: Utility Remuneration and Responding to Distributed Energy Resources (DERs). The letter indicated that cost awards would be available under section 30 of the *Ontario Energy Board Act, 1998*. The letter made provision for stakeholders to apply for eligibility and for electricity distributors to object.

The Distributed Resource Coalition (DRC) applied for cost eligibility. The OEB's July 17, 2019 Decision on Cost Eligibility (Decision) denied this request, stating the request did not provide information on its members or governance structure in order to allow the OEB to consider its request. It also did not adequately explain how it meets the eligibility criteria set out in section 3.03. However, the Decision also invited the DRC to reapply providing that it address the concerns noted with additional information.

The DRC submitted a revised cost eligibility request on July 29, 2019. Its request provided details about its membership and governance. It also stated that it should be eligible for cost awards on the basis that the DRC represents consumers "that have electrified mobility DERs" and also represents an interest or policy perspective relevant to the OEB's mandate and the consultation underway.

Also on July 17, 2019 the OEB issued a [letter](#) regarding the Utility Remuneration and Responding to DERs consultations and indicating the OEB would accept requests for cost award eligibility from participants that did not register to participate in the consultation in response to the March Letter and are doing so now.

Only one request was received in response to the July letter, from Mr. Paul Sommerville, whose request stated that due to his experience and expertise his participation will materially assist the OEB in this consultation and that "his contribution will far exceed the typical anecdotal input of 'citizen interventions.'" Mr. Sommerville's request also noted "the actual awarding of costs on a professional basis is always a matter of the Board's discretion, and its post facto assessment of the relative value of the contribution made by any eligible Intervenor."

Findings

In considering these two requests the OEB first wishes to remind stakeholders that policy consultations are open to all participants; there is no qualification or approval process that must be met for participating in OEB policy consultations, unlike OEB

hearings, where parties must apply for intervenor status. Although the OEB welcomes the views of all stakeholders in this consultation, recovering the costs of participating is not a right. Under section 30 of the *Ontario Energy Board Act, 1998*, the OEB may but is not required to award costs. As any cost awards in this matter are ultimately funded by distribution ratepayers, the OEB must be judicious in assessing eligibility. The OEB's *Practice Direction on Cost Awards* (Practice Direction) sets out the test that a party must meet in order to be eligible in section 3.03. A stakeholder is eligible for costs if it represents "the direct interests of consumers (e.g. ratepayers) in relation to services that are regulated by the Board" or a particular "interest or policy perspective relevant to the Board's mandate and to the proceeding" (or in this case the policy consultations), or if it has an interest in land affected by the process.

In its revised eligibility request DRC identified the two groups that make up its membership for the purposes of these policy consultations: the Electric Vehicle Society (EVS) and Plug'n Drive. In its July 29, 2019 letter the DRC explained that the EVS represents "over 1,000 end-use, largely residential, individual electric vehicle (EV) electricity customers". The OEB appreciates that electric vehicle customers are both ratepayers as customers of the local distribution companies, and also bring a particular interest relevant to the policy consultations. Given that the EVS represents direct rate-paying customers of local distributors, the OEB finds that the EVS would, on its own, be eligible for costs in this policy consultation. However, the OEB has reviewed the information provided in the DRC's supplemental filing regarding Plug'n Drive and has determined that this particular group does not meet the eligibility criteria for cost awards because it is funded by sponsors that include regulated utilities (which are generally ineligible under section 3.05(b) of the Practice Direction) and electric vehicle manufacturers (which are generally ineligible under section 3.04(b), as they represent commercial interests). Therefore if EVS wishes to participate on a standalone basis, it will be eligible for cost awards in the policy consultation. Although the DRC is welcome to participate, it is not eligible for costs.

The OEB does not approve Mr. Sommerville's request for cost award eligibility. The OEB does not have a standard practice of awarding costs to individuals to compensate them for their time in participating in an OEB process (typically costs are awarded only for external consulting and legal fees), and Mr. Sommerville's application did not explain how he represents ratepayers, other than as a rate-paying customer of a distributor. While Mr. Sommerville may bring certain knowledge to the policy consultation, it is not clear that that knowledge is unique when compared to other groups that will be participating in a way that meets the eligibility criteria under the Practice Direction. While he is not eligible for cost awards based on his status and the Practice Direction's

guidance, the Practice Direction does make provision for honorariums to be paid to individuals who are of assistance to the OEB in proceedings, and while the practice has not been used generally in policy consultations, it is available for use in these processes. Therefore, the OEB finds that if Mr. Sommerville does participate in the consultations he will be eligible, depending on the assessment of his contributions, for an honorarium to a maximum of \$2,500.00.

Participants with similar viewpoints are requested to coordinate their activities in order to reduce costs. This effort will be taken into account during the decision on award of costs.

Consultation activities for which eligible participants may claim costs will be announced as the project progresses. This cost eligibility decision applies to all eligible activities in this process.

DATED at Toronto, September 9, 2019

ONTARIO ENERGY BOARD

Original Signed By

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