



Ontario
Energy
Board

Commission
de l'énergie
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Ontario

DECISION ON COST ELIGIBILITY

EB-2019-0207

Distributed Energy Resources Connections Review Initiative

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

September 10, 2019

On August 13, 2019, the Ontario Energy Board (OEB) issued a [letter](#) commencing an initiative to review its requirements in regard to the connection of distributed energy resources (DERs) by licensed electricity distributors (DER Connections Review). The letter indicated that cost awards would be available under section 30 of the *Ontario Energy Board Act, 1998*, which will be paid for by licensed electricity distributors. The letter made provision for stakeholders to apply for eligibility and for electricity distributors to object. Fourteen stakeholders applied for cost eligibility; no objections were received.

The OEB has determined that the following stakeholders meet the criteria set out in the OEB's *Practice Direction on Cost Awards* (Practice Direction) and are therefore eligible for cost awards in this consultation:

- Association of Major Power Consumers in Ontario
- Canadian Manufacturers & Exporters
- Consumers Council of Canada
- Environmental Defence
- London Property Management Association
- Pollution Probe
- School Energy Coalition

For the reasons that follow, OEB has determined that the following applicants are not eligible for cost awards in this consultation:

- Association of Power Producers of Ontario (APPrO)
- Canadian Solar Industries Association (CanSIA)
- Distributed Resource Coalition (DRC)
- Energy Storage Canada (ESC)
- Ontario Sustainable Energy Association (OSEA)
- Ontario Waterpower Association (OWA)
- Paul Sommerville

It should be emphasized that, although these stakeholders are not eligible, they are still welcome to participate in this consultation. In this regard the OEB notes that several of the above applicants expressly asked for permission to participate. Although the OEB's approval is required under the OEB's *Rules of Practice and Procedure* to intervene in a

proceeding such as a rates application, approval is not required to participate in a consultation process such as this one. The only question is whether a participant is eligible to claim costs.

The decision to grant cost award eligibility to some but not all stakeholders should in no way be taken to imply that the OEB prefers the views of some stakeholders over others. As explained below, the decision is based on the factors set out in the Practice Direction, not on the positions of the applicants for cost awards.

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 assessment is guided by the Practice Direction. The Practice Direction says that the burden of establishing eligibility for cost awards is on the stakeholder applying for eligibility.¹ It further provides that:

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.

APPPrO, CanSIA, ESC, OSEA and OWA

The OEB is of the view that APPPrO, CanSIA, ESC, OSEA and OWA have not established that they satisfy any of the section 3.03 criteria. APPPrO's membership is comprised largely of electricity generators. CanSIA is a trade association for solar energy companies. ESC's members are energy storage and DER providers. OSEA's membership, in its own words, "is diverse, and includes small scale distributors and service providers of renewables, and very few large generators", as well as "several non-profit and community organizations that advocate for a variety of interest groups

¹ Practice Direction, section 3.02.

including ratepayers.” OWA represents the waterpower industry. What these organizations have in common is that their membership consists largely or exclusively of generators and other service providers. Based on the information provided, the OEB does not consider that any of these organizations represent “the direct interests of consumers (e.g. ratepayers)”, at least not “primarily”.

The OEB accepts that these organizations represent “an interest or policy perspective” that is relevant to the DER Connections Review. However, one of the factors that the OEB may consider, pursuant to the Practice Direction, is whether an applicant for cost eligibility that is a commercial 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” (emphasis added).² The OEB is of the view that this factor disqualifies APPrO, CanSIA, ESC, OSEA and OWA. Their members include commercial entities. The OEB is not persuaded that the participation of these organizations in this consultation would not be driven by representing the commercial interests of their members. Again, the OEB welcomes participation from all stakeholders, even those representing commercial interests other than as ratepayers. But such stakeholders are not eligible for costs.

As noted above, the Practice Direction contemplates that representing its own commercial interests does not disqualify a stakeholder from seeking costs if that stakeholder is acting in its capacity “as a ratepayer”. The OEB acknowledges that the DER Connections Review will include a review of “connection cost responsibility matters” and could therefore have an impact on the costs DER providers pay to connect to the distribution system. However, the review is much broader than that: it will also look at connection timelines, the standardization of connection technical requirements, and other matters. The OEB therefore does not consider that DER providers and the organizations that represent them will be acting primarily in their capacity “as ratepayers” in this consultation.

In summary, the OEB finds that APPrO, CanSIA, ESC, OSEA and OWA are not eligible for costs because they do not meet any of the criteria in section 3.03 of the Practice Direction. Even if they did, they would be disqualified because their membership includes generators. The Practice Direction states that generators are not eligible for cost awards, either individually or in a group.³ This recognizes that for generators, as

² Practice Direction, section 3.04(b).

³ Practice Direction, section 3.05(b).

well as other regulated entities, the cost of participating in OEB consultations and intervening in OEB proceedings is merely a cost of doing business in the energy sector, and not one which should be recoverable from others. The OEB is not satisfied, based on the information provided, that either of the exceptions to the rule against generator eligibility applies: they are not customers of distributors in the normal sense (i.e. as ratepayers), nor are there “special circumstances” that would justify cost eligibility.⁴

DRC

The DRC states in its request for cost eligibility that its members include the Electric Vehicle Society (EVS) and Plug’n Drive (PnD). DRC explains that EVS represents over 1,000 end-use, largely residential, individual electricity customers who own electric vehicles. PnD, according to DRC, is an organization that provides information on electric vehicles and electric mobility issues. DRC’s request for cost eligibility is denied as it does not meet the eligibility criteria when considering the scope of the DER Connections Review policy consultation. The electric vehicle is clearly a new technology that has many potential impacts on distribution systems, however the DER Connections Review is focused on connection of storage and generation to distribution systems in terms of connection process and technical standards; in that respect electric vehicles are not unique and the approach to connection is not different than connection of load facilities. In the OEB’s view, this is not a situation where DRC “primarily represents an interest or policy perspective relevant” to the consultation, within the meaning of section 3.03 of the Practice Direction. The burden is on the applicant for costs to establish eligibility and on the basis of the materials filed the OEB is not satisfied that the burden has been met.

Mr. Sommerville

The OEB finds that Mr. Sommerville’s request does not meet the eligibility criteria for a cost award according to the Practice Direction and he is therefore not eligible for costs in this policy consultation. Mr. Sommerville has indicated that he intends to participate in his personal capacity, rather than on behalf of a group. He notes that he is not only a ratepayer, but is also “uniquely qualified to provide relevant, experienced, expert and fully objective input into the proceeding.” While Mr. Sommerville may have knowledge about DERs in general and policy matters based on his experience, the OEB does not as a standard practice provide costs to individuals who wish to participate in OEB consultations (typically costs are awarded only for external consulting and legal fees).

⁴ Practice Direction, sections 3.06 and 3.07.

And in this case there does not appear to be a basis for an exception given it is not apparent to the OEB that he has unique information or knowledge related to the issues that are being considered in the DER Connections Review and he is representing himself and not a ratepayer group or other eligible group.

Closing

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.

The OEB reminds participants that cost awards will be available in relation to participation in the Working Group. The maximum number of cost eligible hours per participant to prepare for, attend and report on Working Group Meetings is up to 1.5 times the meeting time. Information on the maximum number of eligible hours will be made when the meetings are announced. 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 10, 2019.

ONTARIO ENERGY BOARD

Original Signed By

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