

January 20, 2022

Ms. Nancy Marconi
Acting Registrar
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, Ontario, M4P 1E4

Dear Ms. Marconi:

Re: EB-2021-0106 – 2021 CDM Guidelines for Electricity Distributors - Cost Claim of LPMA

Earlier today I received an e-mail from Christiane Wong, Information Administrator, requesting clarification on the HST status of the London Property Management Association (LPMA) cost claim in the above noted proceeding. The e-mail from Ms. Wong stated:

“The OEB is working on processing and approving the cost claims for the EB-2021-0106 proceeding. OEB staff notes that LPMA reflects “unregistered” for HST but is billing the HST on the cost claim. If LPMA is billing HST, the HST Number is missing.”

The e-mail also requested that the information be submitted to boardsec@oeb.ca by Friday, January 21, 2022. Given that the Board Secretary position no longer exists, this letter is being filed under the EB-2021-0106 proceeding and a copy e-mailed to the Acting Registrar.

LPMA notes that as a not-for-profit organization, it has always been unregistered for the HST and, therefore, does not have an HST number. LPMA also notes that the OEB has always included the cost of the HST in the cost awards awarded to LPMA.

If the implication is that without an HST number, an intervenor, such as LPMA, is not eligible to recover the HST related portion of the costs it incurs to participate in an OEB proceeding or consultation, then LPMA submits that this would put unregistered HST participants at a financial disadvantage compared to other parties that are registered for the HST.

A registered HST participant in an OEB proceeding does not receive the HST component of its costs through a cost award because it does not need that portion of the cost claim to be held financially whole. Instead of receiving the HST cost incurred from the Board (or the utility that pays the cost claim), the registered party claims the HST expense it pays its consultant as an Input Tax Credit when it files and pays its HST to the government. An unregistered participant cannot claim an Input Tax Credit and, therefore, has no way to offset the denial of the HST portion of the cost claim, resulting in the unregistered

HST being worse off financially than a registered participant. LPMA does not believe that this result is what the OEB wants.

LPMA also notes that reducing the cost claim for the HST component for an approved intervenor that is unregistered for HST purposes would not be compatible with the Practice Directions on Cost Awards.

LPMA believes that it is appropriate for the OEB to include the HST component of its costs for participating in this proceeding, as it has in other proceedings and consultations. A review of Section 9 of the latest version of the Practice Direction on Cost Awards (provided below for ease of reference) indicates that a party will be compensated for the HST it pays on goods and services that are determined by the Board to be eligible for an award of costs. In this proceeding the costs all relate to the services of its consultant, Aiken & Associates. Aiken & Associates is registered for the HST, and its HST number is shown on its invoice to the LPMA.

As noted above, the HST is dealt with in Section 9 of the Practice Direction on Cost Awards:

9. HARMONIZED SALES TAX (“HST”)

9.01 A party will be compensated for the HST it pays on goods and services which are determined by the Board to be eligible for an award of costs.

9.02 To be compensated, a party shall provide the following required HST information when completing the applicable form attached to this Practice Direction as Appendix “B”:

- (a) the tax status of the party, e.g. full registrant, unregistered, qualifying non-profit, zero-rated, tax exempt, etc;
- (b) the HST registration number, if any; and
- (c) the details of costs incurred showing the HST related to each item of cost.

LPMA notes that the Practice Direction on Cost Awards is clear with respect to the recovery of the HST component of the requested cost claim. Section 9.01 states a party will be compensated for the HST it pays on goods and services that are found to be eligible for an award of costs by the Board. The HST is a component of the invoice to be paid by LPMA to Aiken & Associates. If the Board determines that those costs are eligible for an award of costs, so should the HST component be eligible for recovery.

Section 9.02 sets out the requirements for the information to be attached to the cost claim form for a party to be compensated. The forms submitted by LPMA indicate that LPMA is unregistered for the HST, as noted in Section 9.02(a) related to the tax status of LPMA.

The requirement of Section 9.02(b) has been met as the cost claim forms also show an “na” for the HST number as LPMA does not have one and a HST number is only required if the organization has one. Finally, the requirement of Section 9.03(c) has been met both in the cost claim form itself, where the HST is calculated on each line item of the “Details of Fees and Disbursements Being Claimed” form, along with the calculation of the HST shown on the Aiken & Associates invoice, which is included in the cost claim documents.

If you have any questions, please give me a call at (519) 351-8624.

Sincerely,

Randy Aiken
Aiken & Associates

cc: Christiane Wong, OEB