



Ontario
Energy
Board | Commission
de l'énergie
de l'Ontario

DECISION AND ORDER ON COST AWARDS

EB-2022-0140

HYDRO ONE NETWORKS INC.

Application for leave to construct a double-circuit transmission line between Chatham Switching Station and Lakeshore Transformer Station and associated station facilities in the municipalities of Chatham-Kent and Lakeshore and the County of Essex

BEFORE: **Emad Elsayed**
Presiding Commissioner

Robert Dodds
Commissioner

Michael Janigan
Commissioner

January 27, 2023

OVERVIEW

Hydro One Networks Inc. (Hydro One) filed an application with the Ontario Energy Board (OEB) under sections 92 and 97 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) (OEB Act), seeking approval to construct approximately 49 kilometres of 230 kilovolt double-circuit transmission line between Chatham Switching Station and Lakeshore Transformer Station and associated station facilities to connect the new⁷ transmission line at the terminal stations (Project).

The OEB granted the Chippewas of Kettle and Stony Point First Nation (CKSPFN), Environmental Defence, the Haudenosaunee Development Institute (HDI), Pollution Probe and the Ross Firm Group (RFG) intervenor status and eligibility to apply for an award of costs. On July 26, 2022, CKSPFN filed a letter stating that Caldwell First Nation had joined with CKSPFN for the purposes of this proceeding and that their participation would continue under the name of Three Fires Group Inc. (Three Fires)

On November 24, 2022, the OEB issued its Decision and Order in which it set out the process for cost claims.

The OEB received cost claims from Environmental Defence, HDI, Pollution Probe, RFG and Three Fires. On December 8, 2022, Hydro One filed a letter stating that it has no objections to the claims submitted by Environmental Defence, HDI, Pollution Probe and Three Fires. With respect to RFG's cost claim, Hydro One stated that RFG would revise its cost claim to reflect only activities that directly related to the proceeding and that it would provide any objections to RFG's revised claims once filed, should there be any. On December 14, 2022, RFG filed its revised cost claim. No objections to RFG's revised cost claim were received.

Findings

The OEB has reviewed the cost claims to ensure that they are compliant with the OEB's *Practice Direction on Cost Awards*. The OEB approves the cost claims submitted by Environmental Defence, Pollution Probe and Three Fires as filed.

The OEB has reduced HDI's claim from \$25,287 to \$18,000. Many of HDI's interrogatories and submission were out of scope. In Procedural Order No. 2 and an OEB [letter](#) dated August 5, 2022, the OEB stated that the scope of its review in this proceeding was limited by section 96(2) of the OEB Act to a consideration of the interests of consumers with respect to prices and the reliability and quality of electricity service. Most of HDI's input in this proceeding dealt with out of scope issues such as matters associated with the Environmental Study Report (which is not subject to OEB

review), the Crown's duty to consult and accommodate Indigenous groups (which is considered as part of the Environmental Study Report and is not within the scope of the OEB's review in an electricity leave to construct proceeding, except to the narrow extent that it may impact prices and the reliability and quality of electricity service), and the applicability of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Disallowances to HDI's claimed costs were also made for reasons of non-relevance by the OEB to HDI's cost claim in the Sun Canadian Pipelines Limited leave to construct case (EB-2022-0012).

The OEB has reduced RFG's claim from \$71,967.59 to \$40,000. RFG focused on challenging the definition of a "priority project" and OEB's determination of the proceeding's scope. RFG did not submit relevant interrogatories when given the opportunity to do so in response to Procedural Order No. 1. As a result, the OEB had to provide an opportunity for intervenors to file supplementary interrogatories. RFG reiterated out of scope arguments and proposed to introduce out of scope evidence. RFG's final submission was very brief, focused on process and scope and was of limited value to the OEB. The OEB finds that the quantum of RFG's claimed costs is not proportional to the value RFG provided to the OEB through the hearing process.

By letter dated December 1, 2022, HDI requested confidential treatment for the time docket of their counsel. The letter stated that the time docket "contain confidential information that would meet the OEB's test for confidential treatment under the OEB's Practice Direction on Confidential Filings, due to the potential harm that could result from the disclosure of such information." No further details regarding why the time docket should be treated as confidential was provided.

The OEB denies the request for confidential treatment. Parties seeking an award of costs are required to provide their time docket through the OEB's online filing system. The entire claim for costs, including the time docket, is typically placed on the public record. As set out in the Practice Direction on Confidential Filings, a party can request that any document be treated confidentially and not placed on the public record. The Practice Direction on Confidential Filings requires parties to explain why the document should be given confidential treatment, and examples of the types of information that will usually be treated as confidential. The onus is on the person requesting confidentiality to demonstrate to the satisfaction of the OEB that confidential treatment is warranted in any given case.

HDI did not provide an explanation as to why its time docket should be treated as confidential. HDI's time docket is broadly similar to the time docket provided by

other parties that sought costs (none of whom sought confidential treatment), and these dockets are all on the public record. As no compelling reason was provided by HDI that disclosure of this information would cause potential harm, the time dockets shall be placed on the public record.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Hydro One Networks Inc. shall immediately pay the following amounts to the intervenors for their costs:

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|---------------------------------------|-------------|
| • Environmental Defence | \$4,314.34 |
| • Haudenosaunee Development Institute | \$18,000.00 |
| • Pollution Probe | \$10,907.34 |
| • The Ross Firm Group | \$40,000.00 |
| • Three Fires Group Inc. | \$16,388.39 |

DATED at Toronto January 27, 2023

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar