

DECISION AND ORDER

EB-2019-0225

**ASSOCIATION OF POWER PRODUCERS OF ONTARIO /
CANADIAN SOLAR INDUSTRIES ASSOCIATION / ENERGY
STORAGE CANADA / ONTARIO SUSTAINABLE ENERGY
ASSOCIATION**

Appeal of Cost Eligibility Decision in EB-2018-0287 / EB-2018-0288

Before: Emad Elsayed
Presiding Member

September 12, 2019

BACKGROUND

On March 15, 2019, the Ontario Energy Board (OEB) issued a letter initiating two integrated consultation processes: Utility Remuneration (EB-2018-0287) and Responding to Distributed Energy Resources (DERs) (EB-2018-0288). The letter indicated that cost awards would be available under section 30 of the *Ontario Energy Board Act, 1998* (OEB Act). A Decision on Cost Eligibility was issued on July 17, 2019. The Decision was made by an employee of the OEB under authority delegated to him pursuant to section 6 of the OEB Act.

Four stakeholders that were denied cost eligibility – the Canadian Solar Industries Association (CanSIA), the Association of Power Producers of Ontario (APPrO), Energy Storage Canada (ESC), and the Ontario Sustainable Energy Association (OSEA) – filed “motions to review” the Decision.

The OEB Registrar advised in a letter dated August 27, 2019 that the OEB intended to treat the motions as appeals under section 7 of the OEB Act. The letter further advised that the OEB proposed to combine the four appeals into one proceeding, and that it was anticipated that the panel assigned to determine the appeals would do so based on the submissions already filed by the four stakeholders and the record that was before the employee who made the Decision. The letter invited the four groups to advise if they objected to the proposed approach, and none of them did. The four appeals were therefore consolidated and referred to a panel of the OEB for determination.

The OEB denies the appeals filed by ESC, OSEA, CanSIA and APPrO. The OEB finds that these parties have not established that they meet any of the criteria in section 3.03 of the OEB’s *Practice Direction on Cost Awards* (Practice Direction). In addition, the membership of these organizations include generators which are explicitly excluded under section 3.05 of the Practice Direction.

In making these findings, the OEB recognizes and values the input provided by all parties to these policy consultations. However, the issue being decided here is the degree to which this participation meets the cost eligibility criteria articulated in the Practice Direction.

ESC

In its request for cost eligibility, ESC described itself as “the national industry association representing the energy storage industry” whose membership includes “technology developers, project developers, research groups, energy consultants and power generators.” ESC stated, “[a]s industry participants in energy storage, ESC’s members have a direct interest in these proceedings and their outcome.” ESC requested eligibility for cost awards on the basis that it “is a non-profit industry association and it primarily represents an interest or policy perspective relevant to the Board’s mandate and to this proceeding for which cost award eligibility is sought.”

In its July 29, 2019 letter requesting that the OEB review and vary its decision on ESC’s eligibility for cost awards in this consultation, ESC stated, “energy storage providers are directly affected customers with a substantial interest in the Proceeding . . . Energy storage providers are, in fact, customers when they are loading and drawing energy from the electricity distribution system.”

Findings

ESC’s appeal is denied. ESC’s July 29, 2019 letter provides valid reasons for being a participant in these consultations. However, the letter does not provide sufficient grounds linking its argument to the specific cost eligibility criteria in the Practice Direction.

ESC’s membership consists primarily of commercial entities (energy storage and DER providers). The OEB does not agree with ESC’s argument that energy storage providers are equivalent to ratepayers because they draw energy from the electricity distribution system. Also, the fact that energy storage providers may be affected by the outcome of the upcoming consultations does not in itself provide justification for cost award eligibility.

OSEA

OSEA requested cost eligibility on the basis that it “represents potentially affected customers as well as a public interest relative to the Board’s mandate (s. 3.03(b)) and OSEA members are persons with interests that will be affected by the outcome of the process (s 2.3.03(c)).”

In its August 1, 2019 letter asking the OEB to review the OEB's cost eligibility decision on this matter, it noted, "OSEA's membership consists of several non-profit and community organizations that advocate for a variety of interest groups including ratepayers. OSEA's members include green technology developers, distributors, installers and operators and other service providers. OSEA is not an association for energy generators. OSEA's membership is diverse, and includes small scale distributors and service providers of renewables, and very few large generators."

Findings

OSEA's appeal is denied. OSEA's membership consists predominantly of commercial service providers. Although OSEA is expected to provide a useful perspective in these consultations as a participant, the OEB finds that OESA does not meet the eligibility requirements for cost awards articulated in the Practice Direction (see section 3.04(b)).¹

OESA's letter of August 1, 2019 did not provide new details to support a change in the OEB's initial decision denying cost award eligibility. OSEA refers in its letter to being awarded costs by the OEB "in numerous previous hearings". Apart from the fact that the OEB assesses each case on its own merits, OSEA did not identify these "numerous" cases except for one which had a completely different scope.

CanSIA

CanSIA's request for cost eligibility stated it "represents a public interest relevant to the Board's mandate (Section 3.03 (b)) and our members are also persons with interests that would be affected by the outcome of the initiative and Board process (Section 3.03 (c)). CanSIA represents generators as well as technology providers who are primarily customers of distribution and may be applicants in other relative proceedings. Although

¹ Section 3.04 says:

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

[...]

(b) in the case of a party that is a commercial entity, have regard to whether the entity primarily represents its own commercial interest, 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.

[...]

certain members of CanSIA may be ineligible under Section 3.05 (b), CanSIA believes that special circumstances exist to allow it to be eligible for cost award in this process.”

CanSIA identified the following special circumstances that, in its view, would warrant an award of costs in accordance with section 3.07 of the Practice Direction:

- Solar generation providers represent a class of customers who could be subjected to new rules or requirements that could impact their business and the economics of their facilities
- Without participant funding, CanSIA’s effectiveness in the proceedings will be limited because it does not have independent funding to support participation in the initiative
- CanSIA’s participation facilitates the involvement of small solar developers and private individuals who could not otherwise participate meaningfully in the consultation

CanSIA’s August 1, 2019 letter requesting that the OEB vary its cost eligibility decision noted CanSIA was determined to be eligible for cost awards in the OEB’s consultation on distribution rate design because solar generators are customers of distributors (as contemplated in section 3.06 of the Practice Direction).

Findings

CanSIA’s appeal is denied. Although CanSIA’s mandate is relevant to the scope of these consultations, the OEB finds that CanSIA is not eligible for cost awards in accordance with section 3.05 of the Practice Direction, being an industry association for solar energy companies.

CanSIA’s argument in its August 1, 2019 letter that it is “a customer of the applicant” as described in section 3.06 of the Practice Direction does not apply to this consultation process. The OEB also does not agree that there are sufficient reasons to exempt CanSIA from section 3.05 of the Practice Direction as provided for in section 3.07. CanSIA’s mandate and membership clearly fall within the definitions included in section 3.05. The fact that customers who have installed DERs will be directly impacted by OEB’s decisions in the current consultation process is not in itself a sufficient reason for CanSIA to be cost eligible.

APPrO

APPrO's request for cost eligibility stated:

In accordance with Section 3 of the Board's Practice Direction on Cost Awards, APPrO believes that it is eligible for an award of costs as it represents potentially affected customers as well as a public interest relative to the Board's mandate (s.3.03(b)) and APPrO members are persons with interests that will be affected by the outcome of the process (2.3.03(c)). APPrO is an association that represents generation and technology providers, who are often customers of distribution and/or applicants in other related proceedings. As a result, APPrO submits that special circumstances exist to find that it is eligible for a cost award in this process despite the fact that certain of its members may fall within s.3.05(b) of the Practice Direction.

APPrO's letter requesting a review of the OEB's decision on cost eligibility presented the following arguments:

- Electricity producers, including those providing DERs, are consumers of services that are regulated by the OEB and make significant payments to electricity utilities for services such as connection costs and impact studies
- APPrO is "one of the few registered participants that represents the DERs and distributed generation policy perspective that is relevant to the Board's mandate"
- "The Board erred in fact when it found that APPrO's members are commercial entities that are primarily representing their own commercial interests in the Proceedings. Like several of the participants that were granted cost eligibility in the Decision (including the Industrial Gas Users Association, the Building Owners and Managers Association of Toronto, and Canadian Manufacturers & Exporters), APPrO is a non-profit industry association representing members that are consumers of Board-regulated services."

Findings

APPrO's appeal is denied. APPrO's cost award eligibility is explicitly excluded in section 3.05 of the Practice Direction, being a representative of power producers and related businesses. APPrO's mandate is to pursue the commercial interests of its members which disqualifies it from cost award eligibility in this consultation process. Regarding APPrO's argument about representing DER proponents, the OEB is aware that there is

a significant number of DER proponents and other service providers registered to participate in this consultation process.

ORDER**The Ontario Energy Board Orders That:**

1. The Cost Eligibility Decision is confirmed.
2. Each appellant shall bear its own costs of the appeal. Each appellant shall pay an equal share of the OEB's costs of and incidental to the appeal upon receipt of the OEB's invoice.

DATED at Toronto September 12, 2019

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary