



EB-2011-0140

IN THE MATTER OF sections 70 and 78 of the *Ontario Energy Board Act 1998*, S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF a Board-initiated proceeding to designate an electricity transmitter to undertake development work for a new electricity transmission line between Northeast and Northwest Ontario: the East-West Tie Line.

BEFORE: Cynthia Chaplin
Presiding Member and Vice-Chair

Cathy Spoel
Member

**DECISION AND ORDER ON
THE BOARD'S OWN MOTION TO REVIEW THE
PHASE 1 DECISION AND ORDER ON COST AWARDS
September 25, 2012**

Background

On February 2, 2012, the Ontario Energy Board issued notice that it was initiating a proceeding to designate an electricity transmitter to undertake development work for a new electricity transmission line between Northeast and Northwest Ontario: the East-West Tie line. The Board assigned File No. EB-2011-0140 to the designation proceeding.

On September 18, 2012, the Board issued its Phase 1 Decision and Order on Cost Awards, awarding costs to each of the following intervenors:

- Association of Major Power Consumers in Ontario (“AMPCO”);
- Building Owners and Managers Association Toronto (“BOMA”);
- The coalition representing the City of Thunder Bay, Northwestern Ontario Associated Chambers of Commerce and Northwestern Ontario Municipal Association (“City of Thunder Bay Coalition”);
- Energy Probe Research Foundation (“Energy Probe”);
- The coalition representing the Municipality of Wawa and the Algoma Coalition (“Algoma Coalition”);
- Consumers Council of Canada (“CCC”);
- Métis Nation of Ontario (“MNO”);
- National Chief’s Office on Behalf of the Assembly of First Nations (“NCO”);
- Nishnawbe-Aski Nation (“NAN”);
- Northwatch;
- Ojibways of Pic River First Nation (“PRFN”); and
- School Energy Coalition (“SEC”).

The Phase 1 Decision and Order on Cost Awards stated that cost awards to the above-referenced parties and the Board’s own costs will be recovered from licensed transmitters whose revenue requirements are recovered through the Ontario Uniform Transmission Rates, namely:

- Canadian Niagara Power Inc. (“CNPI”);
- Five Nations Energy Inc. (“FNEI”);
- Great Lakes Power Transmission LP (“GLPT”); and
- Hydro One Networks Inc. (“HONI”).

Subsequently, on September 18, 2012, the Board received e-mail correspondence from Jason Madden, a lawyer representing the MNO, indicating that the Phase 1 Decision and Order on Cost Awards seemed to account for only one of the MNO’s two cost claims. The correspondence stated, in part, as follows:

I am now in receipt of the decision from the Board with respect to costs for Phase I. While the decision states “the Board finds that the cost claims filed by the Algoma Coalition, CCC, MNO, NAN, NCO, SEC, AMPCO, BOMA and Energy Probe are within the approved limits set by the Board in its Decision on Intervention and Cost Award Eligibility,” the MNO’s full claimed amount is not included in the chart at the back of the decision. The first claim was for \$26,992.41. This was for my work, Jason Madden of

JTM LAW. The second claim was for the amount of \$22,180.21. This was for the work of my co-counsel, Alex Monem, of Pape Salter Teillet. In total, the MNO's submitted claim was for a total of \$49,172.52 – not \$22,180.21 (as indicated in the decision). I would ask for clarification on this issue as soon as possible.

The Board has reviewed the correspondence from the MNO and finds that, due to Board error, the Phase 1 Decision and Order on Cost Awards failed to consider the full amount of the MNO's submitted claim. The Board has determined that it will review the decision on its own motion.

Board Findings on the Review

The Board has reviewed the Phase 1 Decision and Order on Cost Awards in light of the correspondence received from the MNO and examination of the full MNO claim, and will vary the decision and order as set out below.

MNO

MNO's claimed costs are \$49,172.52, inclusive of \$285.50 in disbursements. The claim is based on 170.4 hours in aggregate, split among two senior lawyers from two different law firms.

MNO's cost claim is higher than all of the other cost claims in this proceeding, except for that of PRFN (which the Board reduced by fifty per cent upon finding it to be excessive). MNO was represented by two counsel. A review of their dockets indicates that both lawyers have claimed significant amounts of time for activities which involved them working with each other. While the Board values the submissions of MNO and accepts that some joint work among co-counsel is expected and acceptable, the Board finds that in this instance the level of jointly claimed work by the two counsel was excessive and amounts to duplication. The Board finds that MNO's cost claim also improperly includes a small disbursement that does not comply with the Board's *Practice Direction on Cost Awards*, as no receipt was provided for a parking charge.

For these reasons, the Board will reduce MNO's claim by one-third and finds that MNO is awarded costs in the amount of \$32,781.68. The Board notes that this cost award is still the second highest of the awards granted to the twelve cost-eligible intervenors for Phase 1 of the designation proceeding.

PRFN

The Board finds that it should also vary a passage of the Phase 1 Decision and Order on Cost Awards pertaining to PRFN in order to accurately reflect the comparison of the PRFN claim to other claims. With respect to PRFN's cost claim, the Phase 1 Decision and Order on Cost Awards states, in part, as follows:

PRFN's claim is more than double the next highest claim, more than triple the average amount of the claims of those participants focusing on similar issues in this proceeding (i.e. MNO, NCO, and NAN), and more than four times the average amount of all of the other eligible participants' cost claims. As well, PRFN's total number of hours claimed is almost twice that of the next highest and more than four times the average of the other eligible participants' total hours.

Given the correct amount of the MNO claim, these comparisons are not accurate. The Board finds that it will vary the foregoing passage such that it now reads as follows (with changes underlined):

PRFN's claim is approximately one-third more than the next highest claim, more than double the average amount of the claims of those participants focusing on similar issues in this proceeding (i.e. MNO, NCO, and NAN), and more than three times the average amount of all of the other eligible participants' cost claims. As well, PRFN's total number of hours claimed is more than 50 per cent higher than that of the next highest and more than four times the average of the other eligible participants' total hours.

The Board notes that the disparity between PRFN's cost claim and the cost claims of the other intervenors is now not as stark. However, the differential is still very substantial, and the Board has found above that the MNO claim itself is excessive. The Board is therefore satisfied that the reduction to the PRFN cost claim remains appropriate. The Board confirms that PRFN is awarded costs in the amount of \$34,398.00. This cost award remains greater than any other award granted for Phase 1 of the designation proceeding.

THE BOARD THEREFORE ORDERS THAT:

1. Appendix A attached to this Decision and Order varies, and shall replace, the original Appendix A attached to the Phase 1 Decision and Order on Cost Awards, issued September 18, 2012.
2. The amounts to be paid by each transmitter in relation to the costs awarded to each eligible participant are as set out in Appendix A to this Decision and Order.
3. The individual transmitters listed in Appendix A to this Decision and Order shall pay the costs awarded to each of the eligible participants as set out in Appendix A.
4. The individual transmitters listed in Appendix A to this Decision and Order shall pay the Board's costs of, and incidental to, this proceeding.
5. Payment of cost awards and of the Board's costs referred to in paragraphs 2 and 3 shall be made to the Ontario Energy Board in accordance with the invoice issued to the individual transmitter, and shall be due at the same time as cost assessments under section 26 of the Act are due.

DATED at Toronto, September 25, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix A

**To the Board's Decision and Order on the Board's Own Motion to Review
the Phase 1 Decision and Order on Cost Awards**

Dated September 25, 2012

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Appendix A

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Electricity Transmitters	Algoma Coalition	AMPCO	BOMA	City of Thunder Bay	CCC	EP	MNO	NCO	NAN	Northwatch	PRFN	SEC	Total
CNPI	35.90	10.86	15.83	98.15	58.31	11.34	115.71	79.56	86.59	47.68	121.42	79.50	\$ 760.85
FNEI	48.25	14.60	21.28	131.93	78.38	15.24	155.53	106.95	116.39	64.10	163.20	106.87	\$ 1,022.72
GLPT	251.34	76.03	110.87	687.21	408.26	79.41	810.17	557.09	606.26	333.87	850.11	556.66	\$ 5,327.28
HONI	9,834.24	2,974.95	4,338.12	26,889.28	15,974.52	3,107.01	31,700.27	21,797.64	23,721.93	13,063.79	33,263.27	21,780.97	\$ 208,445.99
	<u>\$10,169.73</u>	<u>\$3,076.44</u>	<u>\$4,486.10</u>	<u>\$27,806.57</u>	<u>\$16,519.47</u>	<u>\$3,213.00</u>	<u>\$32,781.68</u>	<u>\$22,541.24</u>	<u>\$24,531.17</u>	<u>\$13,509.44</u>	<u>\$34,398.00</u>	<u>\$22,524.00</u>	<u>\$215,556.84</u>