



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 & Vice-Chair

Emad Elsayed
Member

Cathy Spoel
Member

**PHASE 2 DECISION AND ORDER
COST AWARDS**

October 01, 2013

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. Six transmitters applied for designation. In its Phase 2 Decision and Order dated August 7, 2013, the Board designated Upper Canada Transmission Inc.

The Board had previously issued its Decision on Intervention and Cost Award Eligibility on March 30, 2012. Procedural Order No. 2 issued on April 16, 2012 also dealt with intervention and cost award eligibility. As a result of these orders, certain parties were eligible to apply for cost awards in both phases of this designation proceeding.

This Decision and Order pertains to cost awards for Phase 2 of this proceeding, which began with issuance of the Phase 1 decision on July 12, 2012, and concluded with the issuance of the Phase 2 Decision and Order on August 7, 2013.

The cost awards 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").

The costs will be apportioned among these licensed transmitters based on their respective transmission revenues as contained in the Uniform Transmission Rates and Revenue Disbursement Allocators, attached as Exhibit 4.0 to rate order EB-2011-0268 dated December 20, 2011.

The Board's Phase 2 Decision and Order set out the process for eligible intervenors to file their cost claims and to respond to any objections raised by CNPI, FNEI, GLPT and HONI.

The Board received cost claims from the following eligible parties:

- the coalition representing the City of Thunder Bay, Northwestern Ontario Associated Chambers of Commerce and Northwestern Ontario Municipal Association (“City of Thunder Bay Coalition”);
- the coalition representing the Municipality of Wawa and the Algoma Coalition (“Algoma Coalition”);
- Consumers Council of Canada (“CCC”);
- Métis Nation of Ontario (“MNO”);
- Nishnawbe-Aski Nation (“NAN”);
- Northwatch;
- Ojibways of Pic River First Nation (“PRFN”); and
- School Energy Coalition (“SEC”).

On September 16, 2013, HONI filed a letter requesting that the Board ensure that all disbursement receipts from Algoma Coalition and PRFN had been received and match their claims. HONI requested that the Board ensure the approved Tariff of Rates and Charges had been adhered to for the claims from Algoma Coalition and PRFN and sought assurance that the “OEB will assess the value that these parties brought to the proceeding”.

Board Findings

The Board has reviewed the cost claims filed to ensure that they are compliant with the Board’s *Practice Direction on Cost Awards* and has also considered HONI’s comments in its September 13, 2013 letter.

The Board finds that the cost claims filed by CCC (\$27,035.25), Northwatch (\$29,203.42), NAN (\$24,228.33) and SEC (\$30,876.00) are reasonable and are within the approved limits set by the Board in its Decision on Intervention and Cost Award Eligibility and the practice direction.

MNO

The MNO claim will be reduced by \$300.09 due to an error in tax calculation, disallowance of charges for legal assistant support, and meal charges that exceeded

the government's *Travel, Meal and Hospitality Expenses Directive*. Subject to those adjustments, the Board finds the MNO claim to be reasonable and, accordingly, the Board awards MNO \$41,865.82.

Algoma Coalition

The Algoma Coalition claim is reduced by \$1085.51: \$780.90 related to a reduction in the hourly rate for Alexandria Tomasovic Little from \$290 to \$230 as per the practice direction; and \$304.61 related to missing receipts and reduced meal and mileage allowances. Subject to these adjustments, the Board finds Algoma Coalition's claim to be reasonable and, accordingly, awards Algoma Coalition \$23,327.32.

City of Thunder Bay Coalition

The City of Thunder Bay Coalition includes the Corporation of the City of Thunder Bay, the Northwestern Ontario Municipal Association and the Northwestern Ontario Associated Chamber of Commerce.

The City of Thunder Bay Coalition has claimed a total of \$116,848.37. The Board finds that the claim for fees is excessive.

A significant factor in the Board's grant of cost eligibility to the City of Thunder Bay Coalition was its formation as a coalition so that it could control its level of costs. Forming a coalition should result in a more efficient intervention than if each member had intervened individually. While more time may be spent in coordinating with the members of the coalition than for a single intervention, less time should be spent on substantive matters as one counsel (or one set of counsel) represents all members.

The Board addressed this directly in the Decision on Intervention and Cost Award Eligibility:

Until recently, the Board has considered applications for cost eligibility from municipalities on a case-by-case basis, and has found them to generally be ineligible for costs. This is because, in part, municipalities and their associations have access to a revenue stream from their own constituent taxpayers to whom they are responsible and should therefore not be funded by ratepayers; in some instances, because they are owners of regulated distributors who are ineligible for costs; and, because the Board considers that municipalities do not primarily represent the direct interests of ratepayers in relation to regulated services.

The Board went on to state:

...In the normal course, the Wawa/Algoma and Thunder Bay coalitions would be ineligible for costs for the reasons set out above. However, the Board finds that this proceeding presents a special circumstance.

...The Board grants the municipalities cost eligibility on the basis that they have formed two coalitions for purposes of intervention and cost eligibility, thereby controlling the level of their costs.

As a result, the Board would expect the claim for the City of Thunder Bay Coalition to be somewhat higher than the average intervenor claim, given the additional time required to coordinate the intervention. The only other reason for additional costs would be if the intervenor was substantially more active than the other intervenors. The City of Thunder Bay Coalition did make an oral presentation, but so did a number of other intervenors. Overall, the Board finds that the City of Thunder Bay Coalition's contribution was comparable to that of the other intervenors which submitted interrogatories, made a presentation and filed submissions.

The average claim (not including PRFN) was about \$28,000 in fees. The Board finds that an award of \$40,000 in fees plus disbursements and HST for the City of Thunder Bay Coalition is reasonable. This level is comparable to that of the next highest intervenor, MNO, who exhibited a comparable contribution to the process.

The Board notes the following examples of excessive or unreasonable claims, which are illustrative of the overall excessive nature of the claim:

- About 30 hours is claimed in relation to the cost claim and cost award in Phase 1.
- More than 16 hours is claimed for reviewing the Phase 1 decision and preparing an executive summary.
- Time has been claimed in relation to issues which were beyond the scope of the proceeding - for example, in relation to the Thunder Bay generating station.
- On a number of occasions costs are claimed for three lawyers to attend the same meeting.

PRFN

The PRFN claim is for \$130,715.24 in fees plus disbursements. The Board finds that the claim for fees is excessive.

The Board stated in its Decision on Intervention and Cost Award Eligibility that PRFN would, in the normal course, be ineligible for an award of costs because it has a direct

interest in one of the registered transmitters. However, the Board found that there were special circumstances in this proceeding. The Board stated:

By virtue of their geographic location, the Ojibways of Pic River First Nation will be directly affected by this proceeding regardless of which proponent becomes designated. Given this position which in some ways is comparable to that of a landowner, the Board will grant cost eligibility to the Ojibways of Pic River in this proceeding. However, the Ojibways of Pic River First Nation will only be eligible to recover costs related to their interests in land, and rights arising from those interests, in any proposed East-West corridor and not for costs related to their position as a part owner of one of the registered transmitters.

The Board notes that PRFN's participation was focused almost exclusively on Aboriginal Consultation and Participation, whereas other intervenors focused on other issues, many of which were just as complex. PRFN's intervention was generally not broader overall in comparison to many of the other intervenors, and therefore the Board concludes that the claim should be comparable to that of other intervenors.

PRFN filed interrogatories, made an oral presentation and filed submissions, so a claim comparable to intervenors that were similarly active would be reasonable. The Board finds that there is no justification for allowing additional costs related to PRFN's decision to change legal representatives during the proceeding. Nor is there justification for additional costs related to PRFN's complex relationships with other parties or interests in related energy projects. Those matters are beyond the scope of the proceeding. In addition, PRFN's claim includes rates which are in excess of those set out in the practice direction. The Board concludes that PRFN's contributions were comparable to other intervenors which were similarly active, such as MNO, who were engaged on the same issues. On that basis, the Board will allow costs of \$40,000 plus disbursements.

Amounts Payable by the Licensed Transmitters

The amount payable by the licensed transmitters in relation to the costs awarded to each eligible participant is listed in Appendix A to this Decision and Order.

Process for Paying Cost Awards

The Board will use the process set out in section 12 of its *Practice Direction on Cost Awards* to implement the payment of the cost awards. Therefore, the Board will act as a clearing house for the payments of the cost award relating to this consultation process. The practice of the Board is to issue to each transmitter one invoice that covers all cost

awards payable by the eligible participant for the relevant period. As a result, the invoice may cover cost awards payable in relation to a number of matters, including this one.

THE BOARD THEREFORE ORDERS THAT:

1. 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.
2. 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.
3. The individual transmitters listed in Appendix A to this Decision and Order shall pay the Board's costs of, and incidental to, this proceeding.
4. 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 *Ontario Energy Board Act* are due.

DATED at Toronto, October 01, 2013
ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix A

**To the Board's Decision and Order on Cost Awards
Dated October 01, 2013**

EB-2011-0140

Electricity Transmission System Owner/Operator	Algoma Coalition	City of Thunder Bay	Consumer Council of Canada	Metis Nation of Ontario	Nishnawe Aski Nation	Northwatch	Pic River First Nation	School Energy Coalition	Total
CANADIAN NIAGARA POWER INC.	\$ 57.47	\$ 112.34	\$ 66.60	\$ 103.14	\$ 59.69	\$ 71.95	\$ 100.40	\$ 76.07	\$ 647.66
Five Nations Energy Inc.	\$ 77.82	\$ 152.11	\$ 90.19	\$ 139.66	\$ 80.82	\$ 97.42	\$ 135.94	\$ 103.00	\$ 876.97
GREAT LAKES POWER LTD.	\$ 430.11	\$ 840.75	\$ 498.47	\$ 771.92	\$ 446.72	\$ 538.45	\$ 751.37	\$ 569.29	\$ 4,847.07
Hydro One Networks Inc.	\$ 22,761.92	\$ 44,493.69	\$ 26,379.99	\$ 40,851.10	\$ 23,641.10	\$ 28,495.60	\$ 39,763.54	\$ 30,127.64	\$ 256,514.58
TOTAL	\$ 23,327.32	\$ 45,598.89	\$ 27,035.25	\$ 41,865.82	\$ 24,228.33	\$ 29,203.42	\$ 40,751.25	\$ 30,876.00	\$ 262,886.28