



EB-2008-0280

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF cost award eligibility for
interested parties in a consultation process on the
development of guidelines for the pre-approval of long-
term gas supply and/or upstream transportation contracts.

BEFORE: Pamela Nowina
Presiding Member and Vice-Chair

Cynthia Chaplin
Board Member

DECISION ON COST ELIGIBILITY

On August 22, 2008, the Ontario Energy Board (the "Board") issued a letter to interested parties giving notice that it was initiating a consultation process on the development of guidelines for the pre-approval of long-term gas supply and/or upstream transportation contracts (the "LTC Guidelines"). The letter also stated that the process would be conducted in two phases, with stakeholder consultation leading to a staff discussion paper in the first phase and, if the Board concludes that there are circumstances where pre-approval of those contracts may be appropriate, a second phase where the LTC Guidelines will be developed.

The August 22, 2008, letter also notified interested parties that cost awards would be available to eligible persons under section 30 of the *Ontario Energy Board Act, 1998* and that any costs awarded would be recovered from Enbridge Gas Distribution Inc. ("Enbridge"), Natural Resources Gas Limited ("NRG"), and Union Gas Limited ("Union").

Cost Allocation

On September 8, 2008, NRG wrote to the Board and indicated that while it does enter into long-term gas supply contracts for its regulated supply, it does not enter into long-term upstream transportation contracts for same. NRG proposed that any costs recovered from it should be related to long-term gas supply contracting only.

The Board takes note of NRG's current contracting practices, but is of the view that the general nature of the issues to be discussed, both for gas supply and upstream transportation procurements, are directly relevant to NRG as a regulated gas supply distributor. If LTC Guidelines are developed, they will inform and apply to all the regulated gas distributors, including NRG. The fact that NRG currently uses a bundled service from Union, its host distributor, does not preclude it from electing a different gas transportation arrangement in the future. In sum, the Board is of the view that this consultation process will inform NRG on procurement options and that NRG's cost responsibility extends to all the procurement options considered in this proceeding, regardless of whether NRG is using one of those options or an alternative. The Board finds that the costs awarded in this proceeding will be recovered from Enbridge, NRG, and Union and will be allocated based on distribution revenue.

Parties Eligible for a Cost Award

Twenty two parties have indicated their interest to participate in this consultation process. A list of all registered participants is attached to this Decision as Appendix A.

The Board received requests for cost eligibility from the following interested parties:

- Association of Power Producers of Ontario ("APPPrO");
- Building Owners and Managers Association of the Greater Toronto Area ("BOMA Toronto");
- Canadian Manufacturers & Exporters ("CME");
- Consumers Council of Canada ("CCC");
- Federation of Rental-housing Providers of Ontario ("FRPO");
- Industrial Gas Users Association ("IGUA");
- London Property Management Association ("LPMA"); and
- Vulnerable Energy Consumers' Coalition ("VECC").

The Regulated Distributors were given an opportunity to file any objections they might have in relation to the eligibility of the above-noted participants for an award of costs. The natural gas utilities have not filed any objections with respect to the cost award eligibility of any of the above-noted participants.

Based on the criteria set out in section 3 of the Board's *Practice Direction on Cost Awards* (the "Practice Direction"), the Board has determined that BOMA Toronto, CCC, CME, FRPO, IGUA, LPMA, and VECC are eligible for an award of costs.

With respect to APPrO the Board, pursuant to section 3.05 of the Practice Direction, notes that generators are not usually eligible for a cost award. However, notwithstanding section 3.05, the Board may in special circumstances (section 3.07), find that a party which falls into one of the categories listed in section 3.05 eligible for a cost award in a particular process. As of August 14, 2008 certain amendments to the Practice Direction took effect. Prior to the amendments, all parties would be told at the outset of the proceeding whether or not they were eligible for a cost award. Under section 4.03 of the revised Practice Direction, the Board makes the eligibility determination for parties claiming cost eligibility under section 3.07 (eligibility due to special circumstances) at the end of the process. Eligibility for all other parties is still determined at the beginning of the process. More detailed information regarding cost eligibility and the cost claims process is found under sections 4 and 10 of the Practice Direction.

The Board has decided that, in accordance with the revised Practice Direction, APPrO's cost eligibility will be determined at the end of the consultation process.

Please note that even if the Board determines that a party is eligible for a cost award, the party should not assume that it will recover 100% of its costs. Appendix B provides the eligible cost award tariffs and disbursements. Section 5 of the Practice Direction sets out some of the factors the Board may consider in determining the amount of costs awarded to a party.

The Board expects co-operation among parties with similar interests and will consider any lack of co-operation when determining the amount of a cost award.

ISSUED at Toronto, October 2, 2008

Original signed by

Pamela Nowina
Presiding Member

Original Signed By

Cynthia Chaplin
Board Member

APPENDIX A

EB-2008-0280 LIST OF PARTICIPANTS

September 30, 2008

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APPENDIX B

COST AWARD TARIFF

NOTE: All tariffs are exclusive of applicable GST.

Legal Fees -Hourly Rates

Provider of Legal Services	Completed Years Practising	Maximum Hourly Rate
Lawyer	20+	\$330
Lawyer	11 to 19	\$290
Lawyer	6 to 10	\$230
Lawyer	0 to 5	\$170
Articling Student/Paralegal	-	\$100

Analyst/Consultant Fees -Hourly Rates

Consultants are experts in aspects of business or science such as finance, economics, accounting, engineering or the natural sciences such as geology, ecology, agronomy, etc.

Time spent providing expert evidence, providing expert professional advice to the Board, or acting as an expert witness will be compensated at the appropriate analyst/consultant rate set out in the table below. A copy of the expert's curriculum vitae must be attached to the cost claim.

If a consultant provides case management services, these hours are to be listed separately and will be compensated at the case management rate.

Analyst/Consultant Fees (including Case Management)

Provider of Service	Years of Relevant Experience	Maximum Hourly Rate
Analyst/consultant	20+	\$330
Analyst/consultant	11 to 19	\$290
Analyst/consultant	6 to 10	\$230
Analyst/consultant	0 to 5	\$170
Case Management	-	\$170

Disbursements

Reasonable disbursements, such as postage, photocopying, transcript costs, travel and accommodation, directly related to the party's participation in the process, will be allowed. Receipts substantiating the disbursement must accompany the cost claim where possible.

1. Travel by personal automobile will be paid at the Ontario Government Rate.
2. Travel expenses, including reasonable meal and accommodation expenses will be allowed when the claimant's place of business is located at, or more than, 100 km from the site of the process.
3. Taxi, rental car and airport limousine claims will be accepted.
4. Air and rail travel will be limited to "economy" fare rates.
5. Claims for single occupancy rooms at a hotel will be accepted. This does not include "luxury" hotels or suites.
6. Reasonable meal expenses will be accepted.