

Algoma v. OEB - Application for Judicial Review - Government Intervention

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Andrew.

Legal has sent along a request for instructions about whether to intervene on an application for judicial review related to costs in a proceeding before the OEB. They recommend not intervening. Details are below. Please confirm if you concur with the recommendation. A response is due to CLOC this week.

Thanks,
Keley

Algoma Coalition (the "Coalition") filed an application for judicial review of an Ontario Energy Board decision to deny the Coalition its costs for its participation as an intervener in an OEB matter dealing with Hydro One Inc.'s application seeking approval to purchase the voting shares of Great Lakes Power Transmission Inc. ("H1 OEB Matter").

The OEB granted intervener status to the Coalition but denied it eligibility for costs on the basis that:

- costs of intervention are not available to a municipality under section 3.05(i) of the OEB's *Practice Direction on Costs*; and
- The Coalition is a "municipality" under this section of the practice direction because it represents the interests of a group of municipalities.

CLOC has asked for ENERGY's input on whether the Attorney General (MAG) should intervene in this application. MAG has a standing right to intervene on applications for judicial review.

Recommendation: MAG should not intervene in this application for judicial review.

- Typically, MAG intervenes on judicial review applications involving public policy or legal issues of government-wide importance (such as those involving constitutional issues, access to justice issues, matters dealing with an interpretation of law that would have a significant impact on the way government functions).
- Algoma Coalition does raise arguments that if they are unable to receive intervention costs it would affect their ability to provide a voice for small northern Ontario municipalities and their ratepayers in OEB proceedings. However, the central issue in this matter relates to the OEB's interpretation of its own *Practice Direction on Costs* and whether the OEB appropriately applied this practice direction's provisions to deny Algoma Coalition's costs of intervention. There appear to be no significant ENERGY-specific issues of a government-wide importance involved in this application for judicial review that would warrant MAG intervention.
- Also, given that the OEB is a quasi-judicial regulatory agency that operates independently from government, there may be optics issues associated with the government intervening on a matter related to the OEB's interpretation and application of its own practice direction on costs.
- CLOC has advised that, in their view, this case does not warrant MAG intervention and that they intend to issue a notice of non-intervention to the parties.