



EB-2011-0217

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

AND IN THE MATTER OF an application by South
Kent Wind LP for an Order or Orders pursuant to
section 92 of the Ontario Energy Board Act, 1998 (as
amended) granting leave to construct transmission
facilities in the Municipality of Chatham-Kent.

BEFORE: Paula Conboy
Presiding Member

Paul Sommerville
Member

DECISION AND ORDER ON COST AWARDS

Background

South Kent Wind LP ("SKW") filed an application with the Ontario Energy Board (the "Board") dated June 14, 2011 under section 92 of the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B, for an order of the Board granting leave to construct the following transmission facilities (the "Project") in the Municipality of Chatham-Kent:

- (i) Two 34.5 kV/230 kV step-up substations;
- (ii) An approximately 27 km, 230 kV transmission line (the "Corridor Line") that will run between the two step-up substations;

- (iii) An approximately 5.7 km, 230 kV transmission line that will run from a tie-point on the Corridor Line to the Chatham Switching Station owned by Hydro One Networks Inc.; and
- (iv) A fenced-in metering station with two meters to be located adjacent to the Chatham Switching Station.

The Board assigned File No. EB-2011-0217 to the application.

On August 3, 2011, the Board issued Procedural Order No. 1, granting intervenor status to Kent Federation of Agriculture (“KFA”), the Independent Electricity System Operator (“IESO”), and a joint intervention from landowners, William and Mary Ann Machacek and William Alan and Anne English (“Machacek-English”). The Board also granted the KFA and Machacek-English eligibility to apply for an award of costs under the Board’s *Practice Direction on Cost Awards*. Because of the very narrow scope of the Board’s jurisdiction in applications of this kind, the Board emphasized that any award of costs would be strictly limited to costs that are directly referable to matters within the scope of the proceeding.

On October 11, 2011, the Board issued its Decision and Order, setting out the process for intervenors to file their cost claims and to respond to any objections raised by SKW.

The Board received a cost claim from William Machacek in relation to the joint intervention of Machacek-English on October 21, 2011. The KFA did not file a cost claim.

In a letter dated October 27, 2011, SKW objected to Machacek’s cost claim on the basis that the costs claimed were incurred in relation to matters outside the Board’s scope of jurisdiction, as prescribed in section 96(2) of the *Act*.

SKW also objected to the consulting costs claimed in connection with the work of David Machacek. SKW submitted that David Machacek’s curriculum vitae discloses that he

has no credentials in regulatory matters and lacks the relevant experience as set forth in the *Practice Direction on Cost Awards*. SKW further noted that “the apparent family relation of the Consultant to the Machacek family might be adequate evidence for the Board to conclude that the Consultant was not a bona fide third-party expert or consultant engaged by Machacek-English as contemplated by the *Practice Direction on Cost Awards*.”

On November 4, 2011, Machacek-English submitted their reply to the objections of SKW in relation to the costs claimed. Machacek-English submitted that they and 30 other adjacent landowners had many unanswered questions about the SKW project and that they had expended considerable time and energy to incorporate the concerns of all landowners. Machacek-English also submitted that the relationship between William Machacek and David Machacek had been previously disclosed to SKW and the Board. With respect to David Machacek’s credentials, Machacek-English submitted that David Machacek’s familiarity with the hydro corridor and the Chatham-Kent area was valuable in understanding the application, conducting research and in preparing documents.

Board Findings

The Board has reviewed Machacek-English’s cost claim and does not approve the claim. Despite the Board’s repeated efforts to ensure that the Intervenor appreciated the limitations of its jurisdiction in applications of this kind, the costs claimed are not referable to matters within the scope of Section 96(2). Most directly, when the Board accepted the Machacek-English request for intervenor status and costs eligibility, the Board stated:

“The Board notes that many of the issues raised by Machacek-English in its letter of intervention dated July 14, 2011 and in subsequent letters, such as issues related to the liability for upkeep, drainage, pest and noxious weed control of affected lands, the appropriate use of agricultural land and the impact of possible future projects, are beyond the scope of this proceeding.
Any activities undertaken by intervenors with respect to issues outside

the scope of the Board's jurisdiction will not be eligible for any cost recovery."

Accordingly, the Board does not approve the cost claim of Machacek-English.

DATED at Toronto, November 14, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary