



EB-2011-0027

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
Summerhaven Wind LP, for an Order or Orders granting
leave to construct Transmission Facilities.

BEFORE: Cathy Spoel
Presiding Member

DECISION AND ORDER ON COST AWARDS

Background

On January 27, 2011, Summerhaven Wind LP ("Summerhaven") filed an application (the "Application") under Sections 92 and 97 of the Ontario Energy Board Act, 1998 (the "Act") seeking leave to construct transmission facilities to connect the Summerhaven Wind Energy Centre ("SWEC") to the IESO-controlled grid and approval of a form of easement. The work involves constructing 9 km of 230 kilovolt (kV), single circuit overhead transmission line and associated facilities in the County of Haldimand to connect the wind farm to the existing transmission corridor at the Hydro One Networks Inc. ("HONI") N1M designated 230 kV transmission line. The proposed transmission line would extend from a new substation located at the wind farm to a new HONI switchyard at the N1M termination. The Board assigned file number EB-2011-0027 to this proceeding.

The Board issued a Notice of Application and Written Hearing on February 24, 2011 and the Applicant served and published the Notice as directed by the Board. In response to the Notice, six parties requested and were granted intervenor status in this

proceeding: Capital Power; Glenfred Gaswells Ltd; the Corporation of Haldimand County; Haldimand County Hydro Inc. ("HCHI"); Hydro One Networks Inc.; and the Independent Electricity System Operator. None of these parties were determined to be eligible for costs. The Corporation of Haldimand County filed a letter on October 12, 2011 indicating its withdrawal from the proceeding. Ms. Becky Haywood, Rob and Diana Smuck, requested and were granted observer status.

The Board, in its Decision and Order issued on November 11, 2011, granted partial cost eligibility award to HCHI principally in recognition of the helpful evidence it filed about distribution reliability concerns that relate generally to public interest issues. Particularly, the Board found that:

The preliminary induction study by Kinectrics filed on May 31, 2011 by HCHI was helpful to the Board in better understanding the issues in this proceeding. The Board is therefore inclined, under these unusual circumstances, to deviate from its Practice Direction on Cost Awards to allow HCHI to file a cost claim restricted to all reasonable costs associated with the preparation and filing of the Kinectrics study and the preparation and participation of the Kinectrics expert witness, Dr. Emanuel Petrache in the technical conference, held on May 17, 2011, and the costs of counsel's attendance at the technical conference held on May 17, 2011. Any claim for costs outside of these areas will not be considered.

The Board also set out the process for HCHI to file its cost claim and to respond to any objections raised by Summerhaven.

The Board received a cost claim from HCHI on November 21, 2011. By letter dated November 28, 2011, Summerhaven raised concerns regarding HCHI's cost claim on the grounds that the Board's decision was prescriptive. Summerhaven did not oppose the costs claimed by HCHI with respect to its expert witness preparation and attendance at the technical conference or the costs claimed by counsel with respect to his attendance at the technical conference. Summerhaven stated however that costs claimed for counsel's preparation for the technical conference are outside of the scope of the Board's Decision and Order and should therefore be disallowed.

On December 5, 2011, HCHI replied to Summerhaven's letter indicating that the Board's Decision and Order contemplated reasonable time expended by its counsel to consult with Dr. Emanuel Petrache of Kinectrics in respect of the "preparation" and

"filing" of the Kinectrics study and reasonable time expended to "prepare" Dr. Petrache for his "participation" as an expert witness at the technical conference. HCHI further indicated in its submission that the reasonable costs incurred by counsel for such preparation were proper and within the scope of the Decision.

Board Findings

The Board notes that in its Decision and Order of November 11, 2011, it specified and restricted the expenses eligible for recovery to those related to public interest matters. The Board specifically indicated that reasonable costs are for the preparation and filing of the Kinectrics study and the preparation and participation of the Kinectrics expert witness, Dr. Emanuel Petrache in the technical conference and the costs of counsel's attendance at the technical conference.

The Board has determined that costs associated with HCHI's counsel's preparation for the technical conference and for preparing the expert witness of \$1,871.28 are not consistent with the Board's previous findings on this matter and are therefore not recoverable. The Board concludes that HCHI should be awarded costs in the amount of \$13,291.63.

THE BOARD THEREFORE ORDERS THAT:

- 1) Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Summerhaven shall immediately pay HCHI an amount of \$13,291.63.
- 2) Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Summerhaven shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, December 22, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary