

July 22, 2013

RESS, EMAIL & COURIER

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: Dufferin Wind Power Inc. - Application for Leave to Construct (EB-2012-0365) - Applicant Submissions Objecting to CORE Cost Claim

We are counsel to the applicant, Dufferin Wind Power Inc. ("Dufferin Wind"), in the above-referenced proceeding. In accordance with the Board's Decision and Order dated July 5, 2013, please find enclosed a copy of Dufferin Wind's submissions objecting to the cost claim filed on behalf of the intervenor CORE.

Yours truly,



Jonathan Myers

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cc: Mr. D. Crocker, Counsel to CORE
Mr. J. Hammond, Dufferin Wind
Mr. C. Keizer, Torys LLP

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 Dufferin Wind Power Inc. for an Order granting leave to construct a new transmission line and associated facilities.

SUBMISSIONS ON COST CLAIMS

July 22, 2013

A. INTRODUCTION

Dufferin Wind Power Inc. (“DWPI”) filed an application with the Ontario Energy Board (the “Board”) on September 12, 2012 seeking leave to construct certain transmission facilities pursuant to section 92 of the Ontario Energy Board Act (the “Act”). In Procedural Order No. 2, dated December 14, 2012, the Board granted cost eligibility to three intervenors, namely Harvey J. Lyon, The Highland Companies and Lori Bryenton for costs that relate to matters directly within the scope of the proceeding. A fourth intervenor, CORE, filed a late request for cost eligibility on December 21 and in Procedural Order No. 3, dated February 5, 2013, it too was granted cost eligibility for costs that relate to matters directly within the scope of the proceeding.

The Board issued its Decision and Order on July 5, 2013 and invited each of the parties that had been found to be eligible for a cost award to file their cost claims in accordance with the Board’s *Practice Direction on Cost Awards* (the “Practice Direction”) by no later than July 15, 2013. With the exception of CORE, no party filed a cost claim within the requisite period. The focus of DWPI’s cost claim objection, therefore, is on the July 15 cost claim filed by CORE.

B. DWPI's OBJECTION TO CORE'S COST CLAIM

CORE's cost claim is for \$50,011.00 in legal fees, plus \$1,128.38 in disbursements and \$6,648.11 of HST, for a total claim of \$57,787.49.

As discussed below, DWPI objects to CORE's cost claim in respect of all disbursements, together with the applicable HST, on the basis that CORE has not provided the relevant itemized receipts in accordance with Section 7.03 of the Practice Direction. In addition, DWPI objects to CORE's cost claim in respect of portions of the claimed legal fees, together with the applicable HST, on the basis that the underlying costs either are not related to matters directly within the scope of the proceeding or were related to conduct that tended to unnecessarily lengthen the duration of the process.

(a) Disbursements

Section 7 of the Practice Direction sets out the Board's requirements with respect to filing cost claims in respect of disbursements. In particular, Section 7.03 states as follows:

Itemized receipts must be submitted with the cost claim (credit card slips or statements are not sufficient). If an itemized receipt cannot be provided, a written explanation must be submitted to explain why the receipt is unavailable and a description itemizing and confirming the expense must be provided.

CORE has sought to recover \$1,128.38 for disbursements, plus HST, for a total of \$1,275.08.

The majority of this aspect of the claim, accounting for \$1,021.20 plus HST, is in respect of disbursements by L. Bisset. In support of this portion of the claim, CORE has filed a receipt for a taxi in the amount of \$35.65 dated May 2, 2012. This amount does not correspond to any amounts for taxi or travel in the statement of disbursements being claimed on behalf of L. Bisset and, in any event, pre-dates the filing of the application by DWPI by over four months. CORE has also filed what appears to be a listing of courier charges incurred, with one particular item being circled for \$83.09 on February 25, 2013. This amount does not correspond to any amounts for courier or postage in the statement of disbursements being claimed on behalf of L. Bisset and, in accordance with the Practice Direction such a statement is not sufficient to support the claim. No itemized receipts are provided in support of the claim for any other disbursements by Ms. Bisset.

With respect to the remaining disbursements, \$8.68 plus HST is claimed on behalf of C. Barnett for courier and telephone costs. The supporting materials indicate that both the telephone costs and the courier costs being claimed pre-date the filing of the application by DWPI. Finally, \$98.50 plus HST is being claimed on behalf of P. Punjabi for taxi costs. The receipt provided in support of this claim indicates that no HST costs were incurred by CORE's legal counsel on this expense and, as such, the claim for \$12.81 of HST should not be allowed.

Based on the foregoing, it is DWPI's submission that CORE's claim for disbursements should be reduced by \$1,029.88 in net costs, as well as by \$146.70 in HST costs, for a total reduction of \$1,176.58. The only disbursement cost that DWPI does not object to is for \$98.50 with no HST being added to this amount.

(b) Legal Costs

CORE has sought to recover \$50,011.00 for legal fees, plus \$6,501.41 in HST, for a total of \$56,512.41.

In support of this portion of the claim, CORE has provided a number of statements of account from its legal counsel, Davis LLP. As explained in CORE's cover letter, some of the items on the invoices have been redacted as they relate to legal services provided to CORE on a different matter. The totals and the disbursement amounts on the statements should therefore be ignored because they reflect the totals of the redacted and non-redacted items. What is relevant, however, are the indications of the hours worked for the non-redacted items for each of the legal counsel that has been involved. It appears that CORE has calculated the cost claim for legal fees based on these non-redacted numbers of hours worked, multiplied by the tariff amounts applicable to each of the individual legal counsel involved in the matter.

(i) *Costs Incurred Prior to the Proceeding*

A number of the invoices that have been filed correspond to legal services provided by Davis LLP to CORE which pre-date the filing of the application by DWPI on September 12, 2012 and are therefore beyond the scope of the proceeding. These include all of the legal services listed on the invoices dated May 30, 2012, August 20, 2012, August 28, 2012 and those items on the invoice dated November 9, 2012 which relate to services provided before the application filing

date. Accordingly, DWPI submits that CORE's claim should be reduced by \$11,793.00 in legal fees, plus \$1,533.09 in HST, for a total reduction of \$13,326.09. DWPI's determination of these amounts is shown in the following table.

Lawyer/ Student	Hours				Total Hours	Tariff Rate	Fees	HST	Total
	May 30 Invoice	Aug 20 Invoice	Aug 28 Invoice	Nov 9 Invoice					
Bisset	11.7	13.9	9.5	0.4	35.5	230	8,165.00	1,061.45	9226.45
Barnett	1.0	5.0	1.4	-	7.4	290	2,146.00	278.98	2424.98
Alyea	-	5.7	2.4	-	8.1	170	1,377.00	179.01	1556.01
Fenske	-	1.05	-	-	1.05	100	105.00	13.65	118.65
Totals							11,793.00	1,533.09	13,326.09

(ii) *Costs Not Directly Within Scope of the Proceeding or for Conduct that Unnecessarily Lengthened the Proceeding or was Inappropriate*

For the period following the date the application was filed on September 12, 2012, it appears that CORE is seeking to recover a number of legal costs that, based on the descriptions set out in the Davis LLP invoices, are not related to matters directly within the scope of the proceeding, as required by the Board in accordance with Procedural Orders No. 2 and 3. It is clear from the invoices that CORE is engaged in a diverse range of activities that are aimed at delaying or preventing DWPI from developing its wind farm project and the related transmission facilities. While some of these efforts relate directly to the leave to construct proceeding, other activities undertaken by Davis LLP for CORE in relation to the Dufferin Wind Farm project do not. CORE should not be entitled to recover any costs for legal services provided in relation to matters that are not directly within the scope of the leave to construct proceeding. In addition, CORE is seeking to recover costs for certain efforts by its counsel to introduce irrelevant information into the proceeding despite clear indications by the Board as to the scope of the proceeding and the Board's jurisdiction, contrary to the principles set out in section 5.01(h)-(j) of the Practice Direction. Accordingly, DWPI submits that CORE's claim should be further reduced by \$11,688.50 in legal fees, plus \$1,519.51 in HST, for a total of \$13,208.01. A listing of the particular items to which DWPI objects on the basis of the services rendered not being related to matters directly within the scope of the proceeding, together with the reasons therefore, is set out in **Appendix 'A'**. DWPI's calculations of the amounts by which the claim should be reduced on account of the items listed in Appendix 'A' are set out in **Appendix 'B'**.

C. SUMMARY OF AMOUNTS OBJECTED TO

Based on the foregoing, and as calculated in the table below, DWPI objects to the request for recovery by CORE of legal fees and disbursements in the amount of \$24,511.38, plus HST in the amount of \$3,199.30, for a total reduction in the cost claim of \$27,710.68.

Cost Category	Cost	HST	Total
Unsubstantiated Disbursements	1,029.88	146.70	1,176.58
Costs Incurred Prior to Application	11,793.00	1,533.09	13,326.09
Costs Out of Scope/Inappropriate	11,688.50	1,519.51	13,208.01
Totals	24,511.38	3,199.30	27,710.68

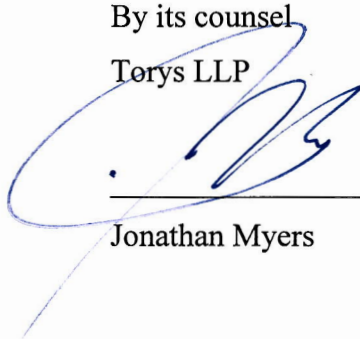
DWPI takes no issue with the remainder of CORE's cost claim, which is for \$26,529.50 in legal fees, plus \$98.50 in disbursements and \$3,448.81 in HST, for a total cost claim of \$30,076.81.

All of which is respectfully submitted this 22nd day of July, 2013.

DUFFERIN WIND POWER INC.

By its counsel

Torys LLP



Jonathan Myers

APPENDIX 'A' – COSTS RELATED TO CONDUCT BEYOND SCOPE OF PROCEEDING

[Note: Shading provided to differentiate between each of the invoices listed in Appendix 'B'.]

Date	Professional	Subject Matter	Hours	DWPI Comments
10/29/12	Bisset	Email to J. Pepino re application to quash a by-law resolution of Dufferin County Council.	0.90	Outside scope of leave to construct proceeding.
11/15/12	Bisset	Exchanging emails with P. Hillock and J. Pepino re railway lands	0.50	P. Hillock is the Dufferin County Clerk. Not clear that correspondence related to the leave to construct.
11/22/12	Bisset	Exchanging emails with W. Crysdale.	0.20	W. Crysdale is a former appellant in the REA Appeal and is currently seeking to regain party status with Davis LLP as his counsel. He had no involvement in the leave to construct.
12/12/12	Bisset	Email with W. Crysdale	0.20	See above.
12/13/12	Bisset	Emails re contract between Melancthon and DWPI.	0.40	Not related to leave to construct. Appears to relate to draft road use agreement.
12/15/12	Bisset	Emails re draft agreement between DWPI and Township of Melancthon	0.30	Not related to leave to construct. Appears to relate to draft road use agreement.
12/21/12	Bisset	Emails with W. Crysdale	0.10	See above.
01/04/13	Bisset	Emails with J. Pepino re status of transmission line	0.10	Not clear that correspondence related to the leave to construct. See entry for 01/16/13.
01/08/13	Bisset	Emails re grant of easement	0.20	Not clear that correspondence related to the leave to construct. See entry for 01/16/13.
01/09/13	Bisset	Telephone call with J. Pepino and D. Crocker	0.30	Not clear that correspondence related to the leave to construct. See entry for 01/16/13.
01/09/13	Crocker	Telephone call with Bisset and J. Pepino	0.30 (Time based on entry of same date for Bisset)	Not clear that correspondence related to the leave to construct. See entry for 01/16/13.
01/16/13	Bisset	Email to J. Pepino re draft letter opposing grant of easement	0.20	Not directly related to leave to construct. Relates to efforts to influence County decision-making.

01/23/13	Bisset	Reviewing Construction Plan Report	1.70	This is a REA-related document that was not filed in the leave to construct proceeding.
02/11/13	Bisset	Telephone call with J. Pepino re supplementary comments and drafting same.	3.00	The supplementary comments relate to the REA process.
02/12/13	Bisset	Finalizing supplementary comments to MOE.	0.80 (We have assumed that the 1.60 was evenly split between the two tasks described)	The supplementary comments relate to the REA process.
02/14/13	Punjabi	Research re OEB authority to expropriate	2.10	Not within scope of leave to construct proceeding.
02/15/13	Punjabi	Discussion re OEB power to expropriate	0.40	Not within scope of leave to construct proceeding.
02/15/13	Bisset	Meeting re OEB power to expropriate	3.00 (We have assumed the remaining 2.00 related to the preparation of submissions on the form of hearing)	Not within scope of leave to construct proceeding.
02/26/13	Bisset	Email with J. Pepino	0.10	See 02/27/13 entry for Bisset.
02/26/13	Barnes	Conferring with Bisset	0.10	See 02/27/13 entry for Bisset.
02/27/13	Barnes	Telephone call with Bisset and J. Pepino and preparing for same	0.70	See 02/27/13 entry for Bisset.
02/27/13	Bisset	Telephone call with J. Pepino re application for injunction and email to J. Pepino re six month service guarantee.	1.00	Application for injunction is outside scope of leave to construct. Service guarantee relates to MOE issuance of REA.
02/28/13	Barnes	Drafting text for J. Pepino	0.20	See 02/27/13 entry for Bisset.
03/19/13	Punjabi	Research and preparation of memo re rights of appeal	3.0	Matters relating to appeals or potential appeals of the proceeding are not within the scope of the proceeding. This is

		from ss. 92, 96, 97 and 101 of OEB Act.		particularly so when undertaken so far in advance of the decision being issued, which indicates it relates to CORE's strategy in opposing DWPI generally.
04/10/13	Bisset	Reviewing County of Dufferin Report.	3.0 (We have estimated that this item accounted for half of the 6.0 hours docketed for multiple tasks)	See 04/17/13 entry for Bisset.
04/11/13	Bisset	Preparing letter to Dufferin County re easement.	0.65 (We have estimated that this item accounted for half of the 1.3 hours docketed for multiple tasks)	This relates to CORE's efforts to influence County decision-making.
04/17/13	Bisset	Research and drafting correspondence to OEB re County resolutions.	0.10	This letter sought to introduce materials and misrepresented the status of DWPI's negotiations with the County for an easement, as described in DWPI letter dated April 18. In addition to being irresponsible in misrepresenting the status based on an unreasonable interpretation of the relevant meeting minutes, whether or not DWPI had secured the easement was not relevant to the leave to construct proceeding. As the Board found in the Decision and Order, "The Board notes that land rights do not have to be in place prior to the grant of leave to construct provided that any authority granted by the Board is appropriately conditioned."
04/19/13	Bisset	Reviewing DWPI s. 41 application.	1.0 (We have estimated this item accounted for 1.0 of the 5.0 docketed for multiple tasks)	DWPI's application under s. 41 is a separate proceeding before the Board in which CORE make seek intervenor status and cost eligibility to recover costs for reviewing that application, which relates to distribution facilities that are not within the scope of the leave to construct proceeding.
05/10/13	Bisset	Emails and meeting re possible injunction.	1.00	Injunction not related to leave to construct proceeding.

05/13/13	Bisset	REA and ERT hearing related matters.	3.20	REA-related.
05/15/13	Bisset	Correspondence with D. Holmes and reviewing Melancthon Council meeting minutes.	0.50	D. Holmes is the CAO/Clerk/Treasurer for Melancthon. This does not appear to be directly related to CORE's participation in the leave to construct.
05/16/13	Bisset	Letter to D. Holmes	1.00	See above entry.
05/17/13	Crocker	Reviewing Black statement of claim and call with OEB counsel re same.	0.40	See entry for 05/22/13 for Bisset, below.
05/17/13	Bisset	Reviewing Black statement of claim and emails with J. Pepino re same.	0.90	See entry for 05/22/13 for Bisset, below.
05/21/13	Crocker	Reviewing letter to OEB and call with OEB counsel re Black statement of claim.	0.50	See entry for 05/22/13 for Bisset, below.
05/21/13	Bisset	Drafting letter to OEB re Black statement of claim.	2.10	See entry for 05/22/13 for Bisset, below.
05/22/13	Bisset	Finalizing letter to OEB re Black statement of claim.	0.30	CORE's letter requested an amendment to the evidentiary record on account of the Black statement of claim. In a May 29, 2013 letter, the Board responded by finding that "The information pertains to untested allegations regarding landowner arrangements for the wind generation project, not the transmission project. Therefore, the information is not relevant to this proceeding and does not represent a material change to the evidence before the Board. The Board hereby denies CORE's request to amend the evidentiary record."
05/24/13	Bisset	Drafting letter to S. Raetsen and meeting re same.	2.20	S. Raetsen is with MOE and administered DWPI's REA application. This is not related to the leave to construct.
05/27/13	Bisset	Finalizing letter to S. Raetsen.	1.10	See above entry.
05/30/13	Crocker	Reviewing DWPI record in response to Black suit.	0.80	Black law suit is outside the scope of the leave to construct.
05/30/13	Bisset	Receiving emails re application record.	0.30	The application record appears to refer to the record from the Black law suit, as referenced in above item for Crocker.

05/31/13	Tyler	Meeting re “willing host” announcement and research re Minister of Energy announcement on Large FIT program.	1.50	Relates to general CORE strategy and is not directly with the scope of the leave to construct.
05/31/13	Bisset	Meeting re “willing host” and other research.	0.30	See above entry.
06/03/13	Bisset	Reviewing application record and responding application record.	1.20	The application record appears to refer to the record from the Black law suit.
06/05/13	Bisset	Reviewing Changes Report.	0.40	Changes Report relates to the REA process.
06/05/13	Crocker	Reviewing letter from OEB.	0.20	This appears to be in reference to the Board’s letter of May 29. See entry for 05/22/13, above.
06/08/13	Bisset	Reviewing Changes Report.	1.70	Changes Report relates to the REA process.
06/11/13	Bisset	Emails and calls re REA approval.	1.30	REA-related.
06/20/13	Tyler	Research re potential expert evidence on turbine noise.	2.20	REA-related.
06/21/13	Tyler	Research re potential experts on turbine noise.	1.50	REA-related.
06/22/13	Bisset	Exchanging emails with J. Pepino.	0.20	REA-related.
06/26/13	Bisset	Research re expert witnesses.	2.80	REA-related.
06/27/13	Bisset	Research re expert witnesses and call with E. Gillespie.	1.40	REA-related.
06/27/13	Crocker	Emails re stay application, preliminary hearing, memo re soils expert.	0.30	REA-related.
06/27/13	Tyler	Research re experts in soil science, potato production and food security.	1.70	REA-related.
06/28/13	Tyler	Research re experts in soils, potatoes and food security	3.80	REA-related.

APPENDIX 'B' – CALCULATION OF COSTS RELATED TO CONDUCT BEYOND SCOPE OF PROCEEDING

Lawyer/ Student	Hours								Total Hours	Tariff Rate	Fees	HST	Total
	Nov 9 Invoice	Dec 12 Invoice	Jan 18 Invoice	Feb 8 Invoice	Mar 28 Invoice	Apr 26 Invoice	May 28 Invoice	July 10 Invoice					
Bisset	0.9	0.7	1.0	2.5	7.9	-	4.75	21.70	39.45	230	9,073.50	1,179.56	10,253.06
Crocker	-	-	-	0.3	-	-	-	2.20	2.5	330	825.00	107.25	932.25
Punjabi	-	-	-	-	2.5	3.0	-	-	5.5	100	550.00	71.50	621.50
Barnes	-	-	-	-	1.0	-	-	-	1.0	170	170.00	22.10	192.10
Tyler	-	-	-	-	-	-	-	10.70	10.70	100	1,070.00	139.10	1209.10
Totals											11,688.50	1,519.51	13,208.01