

Jonathan Myers  
jmyers@torys.com  
P. 416.865.7532

August 8, 2013

**EMAIL & COURIER**

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

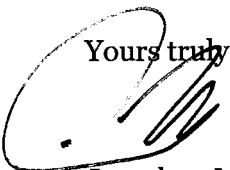
Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: Dufferin Wind Power Inc. - Application for Leave to Construct (EB-2012-0365) - Applicant's Supplemental Submissions on 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, and further to the Applicant's submissions on cost claims filed July 22, 2013, please find enclosed a copy of Dufferin Wind's supplemental submissions objecting to the late cost claim filed on behalf of the intervenor Lori Bryenton.

Yours truly,



Jonathan Myers

Tel 416.865.7532  
jmyers@torys.com

cc: Mr. E. Gillespie, Counsel to CORE  
Mr. G. Andrews, 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.

## **SUPPLEMENTAL SUBMISSIONS ON COST CLAIMS**

**August 8, 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. DWPI filed submissions objecting to certain aspects of CORE’s cost claim on July 22, 2013.

On August 1, 2013, a late cost claim was filed on behalf of Lori Bryenton by her counsel. The cover letter that accompanied the filing explained that the firm's main lawyer assigned to the file was travelling at the time the Decision and Order was released and, upon his return the filing deadline was overlooked. The focus of these supplemental submissions on cost claims is, therefore, on the August 1 cost claim filed on behalf of Ms. Bryenton.

## **B. DWPI's OBJECTIONS TO BRYENTON COST CLAIM**

Ms. Bryenton's cost claim is for \$5,258.00 in legal fees, plus \$32.37 in disbursements and \$687.75 of HST, for a total claim of \$5,978.12. DWPI objects to two small components of Ms. Bryenton's cost claim.

First, DWPI objects to the claim for recovery of disbursements, together with the applicable HST, on the basis that Ms. Bryenton has not provided the relevant itemized receipts in accordance with Section 7.03 of the Practice Direction. Consequently, the claim should be reduced by \$32.37 plus \$4.21 of HST for a total reduction of \$36.58.

Second, DWPI objects to the claim for recovery of costs for the activities undertaken on July 31, 2013. These activities were undertaken subsequent to the issuance of the Board's Decision and Order and consisted of communications with the OEB and Ms. Bryenton regarding the late filing of cost submissions. In DWPI's view, these activities are outside the scope of the intervenor's cost eligibility and, consequently, the claim should be reduced by \$68.00 plus \$8.84 of HST for a total reduction of \$76.84.

Based on the foregoing, Ms. Bryenton's cost claim should be reduced by a total of \$113.42.

## **C. SUBMISSIONS ON LATE FILING OF BRYENTON COST CLAIM**

In DWPI's view, whether or not Ms. Bryenton's cost claim should, in whole or in part, be denied on the basis of it being filed after the prescribed deadline is a matter for the Board to determine in its discretion, consistent with its typical practice in handling late cost claims. To assist the Board in its determination, DWPI offers the following comments and observations:

- We understand from correspondence filed on June 26, 2013 in EB-2013-0040/0041 that Mr. Andrews was away from June 15 and returned to the office as of July 8, which was one week prior to the July 15 deadline for filing cost claims as prescribed in the Decision

and Order. The cost claim was therefore filed 2.5 weeks subsequent to the filing deadline and 3.5 weeks subsequent to Mr. Andrews' return to the office;

- No request for a filing extension was sought prior to the filing deadline and no correspondence was filed immediately upon Ms. Bryenton's counsel becoming aware of the oversight;
- It is incumbent upon counsel to make appropriate arrangements to ensure Board-ordered filing deadlines can be met when counsel knows they will be unavailable for an extended period;
- Although the oversight has been attributed to Mr. Andrews' travel schedule, we note that counsel of record in the proceeding is Mr. Eric Gillespie and not Mr. Andrews. As such, Mr. Gillespie would have received the Decision and Order upon it being issued July 5, at which time he would have known or ought to have known of the filing deadline. The cost claim indicates that at least two other lawyers from the firm were involved in the file and could reasonably have prepared the cost claim within the requisite period despite Mr. Andrews' absence; and
- The late filing results in inefficiencies for DWPI and its counsel in preparing responding submissions, as well as inefficiencies for the Board in reviewing the submissions and responding submissions. The late filing may also delay cost recovery for CORE if the Board decides to issue a single decision and order dealing with both cost claims.

All of which is respectfully submitted this 8th day of August, 2013.

**DUFFERIN WIND POWER INC.**

By its counsel

Torys LLP

A handwritten signature in black ink, appearing to read 'Jonathan Myers', is written over a horizontal line.

Jonathan Myers