



EB-2012-0365

**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.

**BEFORE:** Cynthia Chaplin  
Presiding Member and Vice-Chair

Peter Noonan  
Member

## **DECISION AND ORDER ON COST AWARDS**

**September 13, 2013**

### **BACKGROUND**

On September 21, 2012, Dufferin Wind Power Inc., ("DWPI") applied under sections 92, 96(2), 97 and 101 of the *Ontario Energy Board Act*, 1998 (the "Act") seeking an order of the Board for leave to construct approximately 47 km of single circuit 230 kilovolt ("kV") electricity transmission line and associated facilities (the "Project"). DWPI also applied for an order approving the forms of easement agreements, and an order approving the construction of certain transmission facilities upon, under, or over a highway, utility line, or ditch.

On December 4, 2012, the Board issued Procedural Order No. 1, granting Harvey J. Lyon, The Highland Companies, and Lori Bryenton intervenor status and cost award eligibility. On February 5, 2013, the Board issued Procedural Order No. 3 granting Conserve our Rural Environment (CORE) intervenor status and cost award eligibility.

On July 5, 2013, the Board issued its Decision and Order, in which it set out the process for intervenors to file their cost claims and respond to any objections raised by DWPI.

CORE submitted its cost claim by the July 15, 2013 deadline. Ms. Bryenton submitted her cost claim late on August 1, 2013.

### **CORE's Cost Claim**

CORE claimed total costs of \$57,787.49, including \$50,011.00 in fees, \$1,128.38 in disbursements, and \$6,648.11 in HST.

DWPI objected to all of CORE's claimed disbursements on the basis that CORE did not provide the relevant itemized receipts in accordance with Section 7.03 of the *Practice Direction on Cost Awards* ("Practice Direction"). DWPI submitted that CORE's claim for disbursements should be reduced by \$1,029.88 and \$146.70 for HST, for a total reduction of \$1,176.58.

DWPI further objected to CORE's claim for legal fees incurred prior to the proceeding and for other fees which were not related to matters directly within the scope of the proceeding or were related to conduct that tended to unnecessarily lengthen the process.

Specifically, DWPI noted that a number of the invoices pre-date the filing of the application (September 12, 2012). These include all of the legal services listed on the invoices dated May 30, 2012, August 20, 2012, and August 28, 2012 and those items on the invoice dated November 9, 2012 which relate to services provided before the application filing date. DWPI submitted that CORE's claim should be reduced for out-of-period costs by \$11,793.00 in legal fees, plus \$1,533.09 in HST, for a total reduction of \$13,326.09. In addition, DWPI submitted 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 for costs related to the introduction of irrelevant material into the proceeding.

## **Lori Bryenton's Cost Claim**

Ms. Bryenton filed a total claim of \$5,978.12, including \$5,248.00 in fees, \$32.37 in disbursements, and \$687.75 in HST.

DWPI submitted that Ms. Bryenton's cost claim should be denied on the basis of it being filed after the prescribed deadline. However, DWPI submitted that if the Board were to accept the late filing, then some adjustments should be made to the claim.

DWPI objected to Ms. Bryenton's claim for disbursements on the basis that Ms. Bryenton had not provided the relevant itemized receipts in accordance with Section 7.03 of the Practice Direction. DWPI submitted that the claim should be reduced by \$32.37 plus \$4.21 of HST for a reduction of \$36.58.

DWPI further objected to Ms. Bryenton's costs for the activities undertaken on July 31, 2013. DWPI submitted that these activities were undertaken subsequent to the issuance of the Board's Decision and Order and consisted of communications with the Board and Ms. Bryenton regarding the late filing of cost submissions. DWPI noted that these activities were 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.

Neither CORE nor Ms. Bryenton replied to DWPI's objection letter of July 22, 2013.

## **BOARD FINDINGS**

The Board has reviewed the cost claims of CORE and Ms. Bryenton and has considered the contributions of CORE and Ms. Bryenton in this proceeding.

The Board will accept the cost claim filed by Ms. Bryenton notwithstanding the late filing, including time related to the filing of the claim. The amount claimed for July 31, 2013 is small and reasonable in the circumstances.

In reviewing CORE's cost claim, the Board notes that counsel for CORE was working on a number of other matters beyond the leave to construct application. The onus is on CORE to ensure that the costs claimed relate only to work conducted within the scope

of this proceeding. Although CORE removed from its claim some parts of the various invoices, the Board concludes that a substantial portion of the claim does not directly relate to the leave to construct proceeding.

First, the Board notes that the hours claimed are not fully supported by dockets. Of the total hours claimed (222.2 hours), the dockets submitted contain 191.05 hours. The Board will allow no costs for the un-docketed hours.

Second, the Board finds that any legal costs or disbursements which pre-date the Notice of Application issued on October 16, 2012 are not recoverable because they do not pertain directly to the proceeding before the Board. The Board also finds that legal costs or disbursements incurred after the close of the record on May 2, 2013 are not recoverable, with the exception of counsels' time to review the reply submission, namely 1.4 hours for Laura Bisset and 0.5 hours for David Crocker. The costs after May 2, 2013 largely relate to additional material which CORE attempted to file, but which the Board ruled would not be placed on the public record. These costs are therefore not recoverable. The total reduction for this category is \$20,373.90.

Third, for the hours claimed between October 16, 2012 and May 2, 2013, the Board has reviewed DWPI's objections and accepts each of them. Some of the time claimed, and to which DWPI objects, is for activities which are clearly beyond the scope of the proceeding. For example, CORE claimed costs for work done between December 12 and December 15, related to comments provided to the Ministry of the Environment on the Renewable Energy Approval process. In other instances, the specific purpose is not sufficiently clear for the Board to be satisfied that the time was spent on activities within the scope of the leave to construct proceeding and not on the other matters related to DWPI in which CORE is involved. The onus is on CORE to support its claim with sufficient detail to satisfy the Board that the costs are reasonable. This onus is particularly important in this case because counsel is clearly acting for CORE in a number of matters and not just the leave to construct proceeding. CORE has not adequately supported its claim, and notably has not responded to the objections made by DWPI. The total reduction for counsel time between October 16, 2012 and May 2, 2013 is \$5,538.70.

Fourth, the Board will also disallow the costs claimed for work performed by two students. The Practice Direction provides for claims by counsel and consultants only

and no compelling explanation was provided for why the Board should depart from the Practice Direction in this instance. The total reduction for this category is \$2,226.10.

In accordance with Section 7.03 of the Practice Direction, the only disbursements that the Board has allowed for either claim are those which are supported by the relevant itemized receipts.

As a result, the Board will allow Ms. Bryenton's total claim for disbursements of \$36.58.

The Board will reduce CORE's claim for disbursements by \$797.56 plus \$119.17 of HST for a total reduction of \$916.73. The associated disbursements were either not supported by relevant itemized receipts or the expenditures were incurred outside the relevant timeframe for the proceeding. CORE's approved disbursements therefore amount to \$358.35.

The following summary provides an overview of the impact of the Board's Decision on CORE's total cost claim in this matter:

	ORIGINAL CLAIM (A) (hours)	ITEMIZED ENTRIES (B) (hours)	DEVIATION (A-B) (hours)	DISALLOWED (C) (hours)	AWARDED (B-C) (hours)	ORIGINAL AMOUNT CLAIMED	AMOUNT AWARDED
<b>Total Legal Costs</b>	222.2	191.05	31.15	113.70	77.35	\$ 50,011	\$ 19,620
<b>HST</b>						\$ 6,501	\$ 2,551
<b>Sub Total</b>						\$ 56,512	\$ 22,170
<b>Total Disbursements</b>						\$ 1,275	\$ 358
<b>Total</b>						\$ 57,787	\$ 22,528

Further details with respect to the reductions to CORE's cost claim are provided in Appendix A to this Decision.

#### THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, DWPI shall immediately pay the following amounts to the intervenors for their costs:

- Conserve our Rural Environment \$22,528.39; and

- Lori Bryenton \$5,978.12.
2. Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, DWPI shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

**DATED** at Toronto, September 13, 2013

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

**APPENDIX A**

**TO DECISION AND ORDER ON COST AWARDS**

**BOARD FILE NO. EB-2012-0365**

**DATED SEPTEMBER 13, 2013**

**CORE'S COST AWARDS SUMMARY**

**Table 1 & 2: Breakdown of Amounts Awarded**

LEGAL / CONSULTANT	ORIGINAL CLAIM (A) (hours)	ITEMIZED ENTRIES (B) (hours)	DEVIATION (A-B) (hours)	DISALLOWED (C) (hours)	AWARDED (hours)	HOURLY RATE (\$)	ORIGINAL AMOUNT CLAIMED	AMOUNT AWARDED	REASON
L. Bisset	143.80	127.90	15.90	76.95	50.95	230	\$ 33,074	\$ 11,719	Difference of 15.90 hours in time docket, 35.50 hours prior to October 16, 2012, 23.70 hours post May 2, 2013 and 17.75 hours out-of-scope claimed costs
D. Crocker	28.50	24.80	3.70	3.00	21.80	330	\$ 9,405	\$ 7,194	
C. Barnett	8.70	8.70	0.00	7.40	1.30	290	\$ 2,523	\$ 377	7.4 hours prior to October 16, 2012
A. Lord	2.50	2.50	0.00	2.50	0.00	170	\$ 425	\$ -	2.5 hours prior to October 16, 2012
B. Barnes	1.00	1.00	0.00	1.00	0.00	170	\$ 170	\$ -	1 hour out-of-scope claimed costs
A. Alyea	9.20	5.60	3.60	5.60	0.00	170	\$ 1,564	\$ -	Difference of 3.60 hours in time docket and 5.60 hours prior to October 16, 2012
P. Punjabi	8.80	8.80	0.00	5.50	3.30	100	\$ 880	\$ 330	5.5 hours out-of-scope claimed costs
J. Fenske	2.10	1.05	1.05	1.05	0.00	100	\$ 210	\$ -	Summer student
S. Tyler	17.60	10.70	6.90	10.70	0.00	100	\$ 1,760	\$ -	Summer student

	ORIGINAL CLAIM (A) (hours)	ITEMIZED ENTRIES (B) (hours)	DEVIATION (A-B) (hours)	DISALLOWED (C) (hours)	AWARDED (B-C) (hours)	ORIGINAL AMOUNT CLAIMED	AMOUNT AWARDED
<b>Total Legal Costs</b>	222.2	191.05	31.15	113.70	77.35	\$ 50,011	\$ 19,620
<b>HST</b>						\$ 6,501	\$ 2,551
<b>Sub Total</b>						\$ 56,512	\$ 22,170
<b>Total Disbursements</b>						\$ 1,275	\$ 358
<b>Total</b>						\$ 57,787	\$ 22,528

**Table 3: Summary of Docketed Costs by Period**

	<u>Docketed Hours</u>	<u>Hours Disallowed</u>	<u>Hours Allowed</u>	<u>Hourly Rate (\$)</u>	<u>Amount Awarded</u>	<u>HST</u>	<u>Total Amount Awarded</u>
<b>Prior October 16, 2012</b>							
L. Bisset	35.50	35.50	0.00	230	\$ -	\$ -	\$ -
C. Barnett	7.40	7.40	0.00	290	\$ -	\$ -	\$ -
A. Alyea	5.60	5.60	0.00	170	\$ -	\$ -	\$ -
J. Fenske	1.05	1.05	0.00	100	\$ -	\$ -	\$ -
A. Lord	2.50	2.50	0.00	170	\$ -	\$ -	\$ -
Sub-Total	52.05	52.05	0.00		\$ -	\$ -	\$ -
<b>October 16, 2012 to May 02, 2013</b>							
L. Bisset	67.30	17.75	49.55	230	\$ 11,396.50	\$ 1,481.55	\$ 12,878.05
C. Barnett	1.30	0.00	1.30	290	\$ 377.00	\$ 49.01	\$ 426.01
D. Crocker	21.60	0.30	21.30	330	\$ 7,029.00	\$ 913.77	\$ 7,942.77
P. Punjabi	8.80	5.50	3.30	100	\$ 330.00	\$ 42.90	\$ 372.90
B. Barnes	1.00	1.00	0.00	170	\$ -	\$ -	\$ -
Sub-Total	100.00	24.55	75.45		\$ 19,132.50	\$ 2,487.23	\$ 21,619.73
<b>Post May 02, 2013</b>							
L. Bisset	25.10	23.70	1.40	230	\$ 322.00	\$ 41.86	\$ 363.86
D. Crocker	3.20	2.70	0.50	330	\$ 165.00	\$ 21.45	\$ 186.45
S. Tyler	10.70	10.70	0.00	100	\$ -	\$ -	\$ -
Sub-Total	39.00	37.10	1.90		\$ 487.00	\$ 63.31	\$ 550.31
<b>Allowed Disbursements</b>							\$ 358.35
<b>Total</b>	191.05	113.70	77.35		\$ 19,619.50	\$ 2,550.54	\$ 22,528.39