



EB-2012-0458

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 K2 Wind
Ontario Limited Partnership for an Order granting leave to
construct a new transmission line and associated facilities.

BEFORE: Ellen Fry
Presiding Member

Ken Quesnelle
Member

DECISION AND ORDER ON COST AWARDS
November 29, 2013

Background

On December 5, 2012, K2 Wind Ontario Limited Partnership ("K2 Wind"), applied under section 92 of the *Ontario Energy Board Act, 1998* (the "Act") seeking an order of the Board for leave to construct approximately 5.1 km of underground single circuit 230 kilovolt ("kV") electricity transmission line and associated facilities (collectively, the "Transmission Facilities"). K2 Wind also applied under section 97 of the Act for an order approving the forms of agreements offered to owners of land affected by the route or location of the Transmission Facilities.

On February 19, 2013, the Board issued Procedural Order No. 1, granting the Residents Group intervenor status and cost award eligibility.

On October 8, 2013, the Board issued its Decision and Order which set out the process for the Residents Group to file its cost claim and to respond to any objections raised by K2 Wind.

On October 25, 2013, the Board received the Residents Group's cost claim, which comprised legal fees of \$3,767.50, case management fees of \$6,409.00 for work done by a member of the Residents Group (Ms. Frayne), disbursements, and taxes, for a total of \$11,190.76.

On November 8, 2013, K2 Wind filed its response to the cost claim filed. K2 Wind did not object to the Residents Group's legal fees as claimed. However, K2 Wind objected to the amount of the case management fees, which were claimed at the Board's rate for consultants, on the grounds that Ms. Frayne did not qualify as a consultant. K2 Wind submitted that the Board should take one of two proposed approaches to the Residents Group's claim for case management fees. The first proposed approach would be to apply the Board's hourly rate for paralegals. Alternatively K2 Wind submitted that the Board could award an honorarium in accordance with section 3.08 of the *Practice Direction on Cost Awards* (the "Practice Direction"), proposing the amount of \$3,000.

On November 13, 2013, Ms. Frayne filed a letter with the Board submitting that while she is not a consultant she did perform the work of a case manager, and in so doing managed costs that would otherwise have been incurred for the Residents Group's legal consultant.

Board Findings

In accordance with Section 3.08 of the Practice Direction, the Board will grant an honorarium of \$3,500 and \$512.22 in disbursements (including HST) to the Residents Group for case management work.

The Board notes that while the Practice Direction does not specifically provide for cost claims for case management fees for a representative of a group of individuals such as the Residents Group, section 8.01 of the Practice Direction provides some guidance for this type of situation. Section 8.01 of the Practice Direction states:

8.01 In a case where a number of eligible parties have joined together for the purpose of a combined intervention, the Board will normally allow reasonable

expenses necessary for the establishment and conduct of such a group intervention.

In this case the honorarium reflects the Board's recognition of the efforts of Ms. Frayne, as the Residents Group representative in coordinating the efforts of the five members of the group. This included preparing and filing the Residents Group's interrogatories and submissions, and resulted in a reduction of the time spent by the group's legal counsel on case management activities.

The Board also finds that the Residents Group's claim requires an adjustment to the claimed legal fees to comply with the Practice Direction. Compensation rates for counsel set by the Board in the Practice Direction are based on the number of years of experience. Based on the years since the Residents Group's legal counsel's call to the Ontario Bar, the Board's compensation rate for counsel is \$170/hour. Accordingly, the Board will reduce the Residents Group legal fees claim to allow the recovery of \$2,631.77 in legal fees (including HST) and \$12.26 in disbursements (including HST).

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the Ontario Energy Board Act, 1998, K2 Wind shall immediately pay the Residents Group \$6,656.25.
2. Pursuant to section 30 of the Ontario Energy Board Act, 1998, K2 Wind shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, November 29, 2013.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary