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COURIER**

July 30, 2015
File No.: 129316.1002

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Yonge-Eglinton Centre
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: wpd Sumac Ridge Wind Incorporated (the "Applicant")
EB-2013-0442**

We are the solicitors for the Applicant. Attached please find two (2) copies of the Applicant's Objection to the Cost Claims of the Intervenor which was filed by RESS on July 30, 2015.

Yours truly,


Patrick Duffy

PD/il
Enclosures

TORONTO
MONTRÉAL
OTTAWA
CALGARY
VANCOUVER
NEW YORK
LONDON
SYDNEY

1 **IN THE MATTER** of the *Ontario Energy Board Act*, 1998, S.O.
2 1998, c. 15, Schedule B, (the "**OEB Act**");

3 **AND IN THE MATTER** of an Application by wpd Sumac
4 Ridge Wind Incorporated for establishing a location for the
5 applicant's distribution facilities on public road allowances
6 owned by the Corporation of the Municipality of Kawartha
7 Lakes
8

APPLICANT'S OBJECTION TO THE COST CLAIMS OF THE INTERVENOR

9 **INTRODUCTION**

10 wpd Sumac Ridge Wind Incorporated ("**Sumac**" or the "**Applicant**") filed an application
11 with the Ontario Energy Board (the "**Board**") on December 20, 2013 under section 41 of the
12 *Electricity Act*, 1998 (the "**Application**") for approval to locate distribution facilities on road
13 allowances owned by the Municipality of Kawartha Lakes ("**Kawartha Lakes**"). Pursuant to
14 its Decision and Order in this proceeding dated July 16, 2015 (the "**Sumac Decision and**
15 **Order**"), the Board fixed the location of the distribution facilities described in the
16 Application.

17 On July 22, 2015, as directed by the Board in the Sumac Decision and Order, Dr. E.J. Salmon
18 ("**Salmon**") submitted a cost claim in respect of the proceedings of \$11,602.84, inclusive of
19 taxes and disbursements, for legal/consultant/other fees.

20 These brief submissions are prepared by the Applicant, in accordance with the Sumac
21 Decision and Order, in response to the cost claims filed by Salmon. For the reasons that
22 follow, the Applicant asserts that the costs claimed by Salmon should be reduced by fifty
23 percent (50%).

1 SUBMISSIONS

2 A significant portion of the fees claimed by Salmon relate to matters that were outside the
3 scope of the Board's limited jurisdiction in this application. In Procedural Order No.1 dated
4 August 14, 2014, the Board specifically advised Salmon of the importance of ensuring her
5 submissions were within the scope of the Board's authority under section 41:

6 The Board accepts the request for intervenor status from
7 Elisabeth Salmon given that her farm is adjacent to a road
8 allowance that is the subject of the application. However, the
9 Board notes that the Board's authority under section 41 (9) of
10 the Electricity Act is to determine the location that the
11 distribution facilities will occupy within the road allowances.
12 The Board's authority does not extend to deciding whether the
13 distribution facilities should be permitted to be located within
14 the road allowance. Ms. Salmon should focus her submissions
15 and any evidence accordingly. [Emphasis added.]

16 Despite the Board's caution, Salmon submitted two sets of extensive interrogatories directed
17 to the Applicant that were largely outside the scope of the proceeding; Salmon filed a large
18 volume of intervenor evidence that had no relation whatsoever to the issue before the Board
19 (which include a number of materials that had been filed in a separate proceeding before the
20 Environmental Review Tribunal); and Salmon's final submissions pertained almost
21 exclusively to issues that did not fall within the Board's mandate. In particular, the
22 Applicant made submissions on the following out-of-scope issues:

- 23 • the "prematurity" of the application as alleged by the City of Kawartha Lakes (Final
24 Submission of the Intervenor Dr. E. Salmon, paras. 2 to 11 and 51 to 54);
- 25 • whether the surveyed location of Wild Turkey Road accurately reflects the road
26 allowance (Final Submission of the Intervenor Dr. E. Salmon, paras. 12 to 13);
- 27 • the alleged lack of consideration of alternative routes by the Application (Final
28 Submission of the Intervenor Dr. E. Salmon, paras. 20 to 28);

- 1 • the presentation of an allegedly "feasible" alternative route along Highway 7A and
2 Highway 35 (Final Submission of the Intervenor Dr. E. Salmon, paras. 29 to 42 and 55
3 to 59); and
- 4 • the environmental impacts of the distribution line on vegetation and groundwater
5 (Final Submission of the Intervenor Dr. E. Salmon, paras. 43 to 50).

6 The irrelevance of these matters to an application under section 41 was highlighted by the
7 Board's finding in the Sumac Decision and Order when the Board rejected Salmon's
8 arguments and stated that it was not permitted "to decide in this proceeding that the line be
9 located in a different road allowance" (as argued by Salmon). Further, the Board observed
10 that, despite being explicitly advised of the scope of the application when granted
11 intervenor status, Salmon had not "proposed an alternate location within [the Gray Road
12 and Wild Turkey Road] allowances."


13 CONCLUSION

14 In circumstances where an intervenor raises matters that were outside the scope of the
15 proceedings, despite being notified at the outset of the Board's limited jurisdiction on an
16 application under section 41 of the *Electricity Act, 1998*, the Applicant submits that such
17 blatant disregard for the proceedings warrant a reduction in the amount of costs awarded.
18 Given that it is impossible to assess the time spent on relevant matters as compared to the
19 time spent on irrelevant matters, the Applicant submits that the costs claimed by Salmon
20 should be reduced by fifty percent.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at Toronto, Ontario, this 30th day of July, 2015

wpd Sumac Ridge Wind Incorporated
by its counsel
Stikeman Elliott LLP


Patrick Duffy