



# **Ontario Energy Board Commission de l'énergie de l'Ontario**

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

**EB-2013-0442**

## **WPD SUMAC RIDGE WIND INCORPORATED**

**Establishing a location for the applicant's distribution facilities on  
public road allowances owned by the Corporation of the  
Municipality of Kawartha Lakes**

**BEFORE: Ken Quesnelle**  
Presiding Member and Vice Chair

**Ellen Fry**  
Member

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**August 26, 2015**

## INTRODUCTION AND SUMMARY

wpd Sumac Ridge Wind Incorporated (Sumac) applied to the Ontario Energy Board (OEB) for approval to locate distribution facilities on road allowances owned by the Municipality of Kawartha Lakes (Kawartha Lakes).

The OEB issued Procedural Order No. 1, granting Dr. Elisabeth Salmon (Dr. Salmon) intervenor status given that her farm is adjacent to a road allowance that is the subject of the application.

The OEB issued its Decision and Order, in which it set out the process for Dr. Salmon to file a cost claim, for Sumac to respond to the claim and for Dr. Salmon to respond to any objection raised by Sumac.

The OEB received a cost claim from Dr. Salmon.

Sumac filed a letter with the OEB outlining its objections to Dr. Salmon's cost claim. Sumac noted that in Procedural Order No. 1, the OEB specifically advised Dr. Salmon of the importance of ensuring her submissions were within the scope of the Board's authority under section 41. Sumac submitted that despite the OEB's direction, Dr. Salmon submitted two sets of interrogatories that were largely outside the scope of the proceeding. Sumac stated that the matters raised were not relevant matters to an application under section 41 as highlighted in the OEB's Decision and Order wherein the OEB stated that it was not permitted "to decide in this proceeding that the line be located in a different road allowance". Sumac further stated that despite being explicitly advised of the scope of the application when granted intervenor status, Dr. Salmon had not proposed an alternate location within the Gray Road and Wild Turkey Road allowances. Sumac submitted that the costs claimed by Dr. Salmon should be reduced by 50%.

Counsel for Dr. Salmon submitted that the issues facing the OEB with respect to this particular application were issues that were novel. With respect to the interrogatories, Mr. Gillespie submitted that Sumac's characterization was never ruled on by the OEB and was solely the opinion of Sumac. Mr. Gillespie submitted that the costs claimed did not include any disbursements or time spent personally and the rates for counsel did not reflect the actual rate.

**OEB Findings**

The OEB disallows 30% of Dr. Salmon's claim on the grounds that a significant number of issues raised are outside the clearly identified scope of this proceeding. The OEB's Notice and Procedural Order No.1 outlined the scope in advance of granting intervention requests and in advance of the interrogatory process. In the OEB's view, Dr. Salmon did not sufficiently use this information on scope to guide her participation. Therefore, the OEB will only award amounts equal to 70% of those claims.

The OEB in making this award does not accept Sumac's submission on the degree (50%) of the disallowance. The OEB does not necessarily expect precision in the proceeding with respect to scope and therefore will provide some latitude in the cost award. As a result the OEB finds that a disallowance of 30% is more appropriate than one of 50%.

The OEB finds that Dr. Salmon is eligible for 70% of the reasonably incurred costs of participating in this proceeding. The OEB finds that the adjusted claim of Dr. Salmon is reasonable and shall be reimbursed by Sumac.

**THE BOARD ORDERS THAT:**

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Sumac shall immediately pay Dr. Salmon \$8,121.99.
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Sumac shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

**DATED** at Toronto August 26, 2015

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary