

December 16, 2015

VIA COURIER, EMAIL & RESS

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Email: boardsec@ontarioenergyboard.ca

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: Windlectric Inc. – Application for Leave to Construct Transmission Facilities (EB-2014-0300)

Cost claim

We are counsel to the Association to Protect Amherst Island (“APAI”), which is an intervenor in this leave to construct application.

APAI claims \$9,009.17 in costs, incurred as a direct and necessary consequence of its participation in this proceeding. These costs are detailed in the attached cost claim.

Background

In its Procedural Order #1 dated November 26, 2014, the Board granted APAI intervenor status in this leave to construct proceeding.

In its Procedural Order #3 dated February 24, 2015, the Board approved APAI’s request for cost eligibility. The applicant, Windlectric Inc. (“Windlectric”), did not object to APAI’s request.

Days after receiving cost eligibility, on March 2, 2015, APAI retained Stockwoods LLP to represent its interests in this proceeding. Prior to that time, APAI was not represented by legal counsel.

In its Decision and Order dated December 10, 2015, the Board granted Windlectric's leave to construct application, and ordered that APAI's cost claim be submitted by December 18, 2015.

Cost considerations

- ***APAI participated responsibly in the process.*** APAI provided helpful, focused submissions that aimed to highlight a number of important factual and legal arguments for the Board's consideration. Although the Board did not ultimately agree with APAI's submissions that these factors should result in the application being dismissed, counsel to APAI at all times acted reasonably and responsibly in putting its case forward. Its arguments were based on the case law and the record, and were presented in a clear and straightforward manner.
- ***APAI contributed to a better understanding of the issues.*** APAI put forward a number of submissions that assisted the Board in its understanding of the issues, and its evaluation of the application. For example, APAI argued that Windlectric must obtain updated SIA and CIA reports, since the reports included in the application were several years old (see APAI argument at paras. 36ff). This position was echoed by Board staff in its submissions. After Windlectric submitted updated reports on May 29, 2015, APAI wrote to the Board and pointed out that further modifications to the generation facility were not reflected in the updated SIA and CIA reports (see APAI letter dated June 2, 2015). The Board accepted APAI's submission on this point and required Windlectric to provide further updated reports, or confirmation from IESO and Hydro One that the most recent reports remain accurate (see Board letter dated June 11, 2015).

Even with respect to the issues where its arguments were not successful, it is still fair to say that APAI contributed to the Board's understanding of the issues, and also clarified the Board's approach to certain issues for future cases. For example, APAI argued that Windlectric's form of land agreements do not comply with the Board's *Filing Requirements*, and thereby ran afoul of the requirement in s. 97 of the *Ontario Energy Board Act, 1998* (see APAI argument at paras. 5ff). In its decision, the Board clarified its approach to this issue, and as far as APAI is aware, that is the first time it has addressed the question of whether form of land agreements must, in all circumstances, necessarily comply with the *Filing Requirements*.

Much of APAI's evidence in this proceeding concerned the factual issues surrounding the delay in Windlectric obtaining its REA, in support of the argument that this application was premature, and that Windlectric would not be able to meet the requirements of its FIT contract.¹ This evidence had an important impact by highlighting these legitimate

¹ APAI did not file this evidence to support any free-standing environmental arguments. As APAI set out in its January 19, 2015 letter to the Board: "APAI recognizes that issues related to the environment, heritage noise and health are not within the purview of the OEB however we maintain that the new information could result in further delays to the REA approval and the project schedule and it is APAI's position that the Board requires this information to make its decision."

concerns, which were adopted by Board staff in its submissions as well (OEB staff submission at p. 8).

Finally, it is worth noting that even where the Board disagreed with APAI on the *legal conclusion* that APAI put forward, it did not dispute APAI's characterization of the underlying facts, context and circumstances (which, in many cases, would not otherwise have been brought to the Board's attention). In other words, APAI assisted the Board by bringing certain important aspects of the factual backdrop for this application to its attention, which the Board was then able to consider before making its final decision.

- ***APAI complied with the Board's orders, rules, codes, guidelines and filing requirements.*** To the best of their ability Counsel to APAI was careful to follow these rules, and not to cause any unnecessary inconveniences or complications in the application process.
- ***APAI made reasonable efforts to ensure its participation was not unduly repetitive and was focused on relevant and material issues.*** APAI is a not-for-profit community organization with very limited resources. Prior to retaining counsel, APAI participated in this application to the best of its ability, with APAI's volunteer representative spending hours poring over the Board's rules and regulations, and trying to figure out what was appropriate at each step of the process. APAI did so without the benefit of anyone who had previously gone through this kind of proceeding.

Although APAI's participation during this period may not have been as focused or streamlined as it could have been, within days of gaining cost eligibility APAI made the responsible decision to retain outside counsel to represent its interests before the Board. APAI recognized the importance of participating reasonably in the Board's process, and wanted to ensure that it did so. APAI's decision to retain counsel benefitted this proceeding significantly by providing the Board with a more focused, concise and well-developed legal argument for its consideration.

Groups in APAI's position – with a genuine interest in the case, no legal expertise and limited resources for accessing such expertise– ought to be encouraged to participate in these types of proceedings with the assistance of counsel. Beyond being the just result in the circumstances of this case, granting APAI's cost claim would provide such encouragement. On the other hand, denying APAI its costs would disincentivize other similarly situated intervenors from retaining counsel – an unfortunate result that would increase inefficiency and unnecessary delay in these types of proceedings.

Quantum of costs

The quantum of costs sought by APAI is entirely reasonable in the circumstances. The bulk of work on the intervention was done by junior counsel, who was experienced in matters before the Board. It is important to note that the time spent on this file by senior counsel is not being claimed and is not included on the costs claim. With respect to the number of hours claimed, it

is important to recognize that this application was voluminous and raised several factual and legal issues involving careful review, investigation and research.

Conclusion

For all of these reasons, APAI submits that it ought to receive its costs of this application in the amount of \$9,009.17, as detailed in the attached cost claim.

Yours truly,



Justin Safayeni
Encl.

c: Jonathan Myers (Torys LLP)
Maia Chase (IESO)
Laurie Kilpatrick (APAI)
Paul Le Vay (Stockwoods LLP)

Ontario Energy Board
COST CLAIM FOR HEARINGS



Affidavit and Summary of Fees and Disbursements

This form should be used by a party to a hearing before the Board to identify the fees and disbursements that form the party's cost claim. Paper and electronic copies of this form and itemized receipts must be filed with the Board and served on one or more other parties as directed by the Board in the applicable Board order. Please ensure all required fields are filled in and the Affidavit portion is signed and sworn or affirmed.

Instructions

- Required data input is indicated by yellow-shaded fields. Formulas are present in the document to assist with the calculation of the cost claim.
- All claims must be in Canadian dollars. If applicable, state exchange rate and country of initial currency.
- A separate "Detail of Fees and Disbursements Being Claimed" (comprising a "Statement of Fees Being Claimed" and a "Statement of Disbursements Being Claimed") is required for each consultant or lawyer/articling student/paralegal. However, only one "Summary of Fees and Disbursements" covering the whole of the party's cost claim should be provided.
- The cost claim must be supported by a completed Affidavit signed by a representative of the party.
- A CV for each consultant must be attached unless, for a given consultant, a CV has been provided to the Board in another process within the last 24 months.
- Except as provided in section 7.03 of the Practice Direction on Cost Awards, itemized receipts must be provided.

File # EB- <u>2014-0300</u>	Process: <u>Leave to construct</u>
Party: <u>Association to Protect Amherst Island</u>	Affiant's Name: <u>Laurie Kilpatrick</u>
HST Number: _____	HST Rate Ontario: <u>13.00%</u>
Full Registrant <input type="checkbox"/>	Qualifying Non-Profit <input type="checkbox"/>
Unregistered <input checked="" type="checkbox"/>	Tax Exempt <input type="checkbox"/>
Other <input type="checkbox"/>	

Affidavit

I, Laurie Kilpatrick, of the City/Town of Stella
in the Province/State of Ontario, swear or affirm that:

1. I am a representative of the above-noted party (the "Party") and as such have knowledge of the matters attested to herein.
2. I have examined all of the documentation in support of this cost claim, including the attached "Summary of Fees and Disbursements Being Claimed", "Statement(s) of Fees Being Claimed" and "Statement(s) of Disbursements Being Claimed".
3. The attached "Summary of Fees and Disbursements Being Claimed", "Statement(s) of Fees Being Claimed" and "Statement(s) of Disbursements Being Claimed" include only costs incurred and time spent directly for the purposes of the Party's participation in the Ontario Energy Board process referred to above.
4. This cost claim does not include any costs for work done, or time spent, by a person that is an employee or officer of the Party as described in sections 6.05 and 6.09 of the Board's Practice Direction on Cost Awards.

Laurie Kilpatrick
Signature of Affiant

Sworn or affirmed before me at the City/Town of Stella,
in the Province/State of Ontario, **on** Dec 14/15,
(date)

M. Blair Anderson
Commissioner for taking Affidavits
M. Blair Anderson

Ontario Energy Board
COST CLAIM FOR HEARINGS



Affidavit and Summary of Fees and Disbursements

File # EB- 2014-0300 **Process:** Leave to construct

Party: Association to Protect Amherst Island

Summary of Fees and Disbursements Being Claimed

Legal/consultant fees	\$7,089.00
Disbursements	\$883.72
HST	\$1,036.45
Total Cost Claim	\$9,009.17

Ontario Energy Board

COST CLAIM FOR HEARINGS



Detail of Fees and Disbursements Being Claimed

File #	EB- 2014-0300	Process:	Leave to Construct
Party:	Association to Protect Amherst Island	Name:	Justin Safayeni
		Completed Years Practising/Years of relevant experience	
Counsel/Articling Student/Paralegal:	<input checked="" type="checkbox"/>	5	
Consultant:	<input type="checkbox"/>		
CV attached:	<input type="checkbox"/>	CV not required:	<input checked="" type="checkbox"/>

Statement of Fees Being Claimed

	Hours	Hourly rate	Subtotal	HST	Total
Preparation	9.80	\$170.00	\$1,666.00	\$216.58	\$1,882.58
Attendance - Technical Conference			\$0.00	\$0.00	\$0.00
Attendance - Settlement Conference			\$0.00	\$0.00	\$0.00
Attendance - Oral Hearing			\$0.00	\$0.00	\$0.00
Argument	31.90	\$170.00	\$5,423.00	\$704.99	\$6,127.99
Case Management		\$170.00	\$0.00	\$0.00	\$0.00
TOTAL LEGAL/CONSULTANT FEES			\$7,089.00	\$921.57	\$8,010.57

Statement of Disbursements Being Claimed

	Net Cost	HST	Total
Photocopies	\$189.56	\$24.64	\$214.20
Printing	\$676.11	\$87.89	\$764.00
Fax		\$0.00	\$0.00
Courier	\$18.05	\$2.35	\$20.40
Telephone		\$0.00	\$0.00
Postage		\$0.00	\$0.00
Transcripts		\$0.00	\$0.00
Travel: Air		\$0.00	\$0.00
Travel: Car		\$0.00	\$0.00
Travel: Rail		\$0.00	\$0.00
Travel (Other):		\$0.00	\$0.00
Parking		included	\$0.00
Taxi or Airport Limo		\$0.00	\$0.00
Accommodation		\$0.00	\$0.00
Meals		\$0.00	\$0.00
Other:		\$0.00	\$0.00
TOTAL DISBURSEMENTS:	\$883.72	\$114.88	\$998.60

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Cost Claim Expenses

Date		Net Cost	H.S.T.	Item
01/15/2015	Staples	\$ 216.34	\$ 28.12	paper,printer supplies
03/27/2015	Staples	\$ 74.85	\$ 9.73	paper,printer supplies
02/03/2015	Staples	\$ 142.15	\$ 18.48	paper,printer supplies
02/07/2015	Staples	\$ 104.68	\$ 13.61	paper,printer supplies
02/23/2015	Staples	\$ 138.09	\$ 17.95	paper,printer supplies
Totals		\$ 676.11	\$ 87.89	
02/23/2015	Staples	\$ 189.56	\$ 24.64	photocopying

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Discount -1.49

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Debit 84.58

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1	RECYCLING FEE ONT	790753	10.75H
1	LEXAR 32GB JUMPORT	650590164974	19.92H
1	123 PC SETUP	1296085	59.00H
1	TECH-NORTON SECURITY	1268171	50.00H
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