



**Ontario EnergyBoard**  
**Commission de l'énergie de l'Ontario**

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**DECISION AND ORDER ON COST  
AWARDS**

**EB-2014-0300**

**WINDLECTRIC INC.**

**Application for Leave To Construct transmission facilities in Loyalist  
Township in the County of Lennox and Addington, Ontario.**

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

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**February 3, 2016**

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## INTRODUCTION AND SUMMARY

On September 22, 2014, Windlectric Inc. (Windlectric) filed an application with the Ontario Energy Board (OEB) under sections 92, 97 and 101 of the Act for leave to construct approximately 5.9 kilometers of transmission line and associated facilities to connect its proposed Amherst Island wind generation project to an existing Hydro One Networks Inc. transmission line.

On February 24, 2015, the Board issued its Procedural Order No. 3 granting intervenor status and cost award eligibility to the Association to Protect Amherst Island (APAI).

On December 10, 2015, the OEB issued its Decision and Order in which it set out the process for intervenors to file their cost claims, for Windlectric to object to the claims and for intervenors to respond to any objections raised by Windlectric.

The OEB received a cost claim from APAI.

On January 6, 2016, Windlectric filed submissions objecting to APAI's cost claim, and arguing that APAI should receive only 25% of its costs and disbursements.

Windlectric noted that APAI's claim for legal fees does not include any supporting invoices/dockets from its counsel that would permit a proper assessment of the billable hours being claimed. Windlectric further noted that APAI's repeated delays and lack of respect for the filing deadlines, as well as its efforts to introduce repetitive submissions from non-parties and substantial materials were beyond the clearly delineated scope of the proceeding. In addition, Windlectric objected to APAI recovering the full amount claimed for disbursements which was not adequately supported and pertained to costs incurred largely for printing significant volumes of material that the OEB found to be unrelated to the scope of the proceeding. Windlectric submitted that the resulting cost recovery should be for a total of \$2,252.29.

On January 16, 2016, APAI responded to Windlectric's letter. APAI indicated that it had inadvertently included 1.9 hours of counsel's initial time which was reflected on APAI's bill but for which APAI was ultimately not charged by counsel. APAI's submitted that the revised cost claim is for \$8,644.28.

With respect to the legal fees, APAI stated that the dockets confirmed that the hours of counsel time all directly and exclusively relate to assisting APAI in its intervention on this leave to construct application. APAI noted that it was only claiming for the time of one lawyer from Stockwoods LLP and was not claiming any costs for the time of the senior supervisor lawyer on this file. APAI further noted that it participated in this application to the best of its ability and without the benefit of anyone who had previously

gone through this kind of proceeding. APAI argued that it retained counsel, it adopted a more focused and streamlined approach which benefitted all participants in this process, including the OEB.

With respect to disbursements incurred, APAI noted that all disbursements were incurred directly by APAI through its representative, Laurie Kilpatrick. In addition, Ms. Kilpatrick swore an affidavit explicitly stating that the disbursements 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”.

### **OEB Findings**

The OEB is satisfied that APAI has adequately responded to Windlectric’s objection regarding the lack of supporting dockets and invoices. The OEB accepts the provided documentation as having substantiated the claim for legal fees.

The OEB accepts APAI’s submission that its evidence with respect to matters that were outside of the OEB’s stated purview was put forward in support of its argument that there were issues associated with Windlectric’s Renewable Energy Approval (REA) application that would render its section 92 application premature. The OEB notes that OEB staff made the argument that the OEB should not approve transmission facilities unless the environmental assessment approval is expected shortly or it appears to be non-contentious. The OEB did not make any specific findings with respect to the approval of the REA in its decision to grant the leave to construct. The OEB included a general notation that Windlectric is responsible for obtaining all necessary approvals, permits, licences, certificates, land agreements, connection agreements and easement rights required to construct, operate and maintain the Proposed Transmission Facilities. While the OEB did consider the specific approval of the REA to be a determinative factor in its decision it would be unreasonable to deny APAI’s claim to costs associated with evidence in support of an argument that the OEB staff also submitted. To do so would be to suggest that APAI should have a greater awareness of the scope of the hearing than OEB staff.

Given the OEB’s acceptance of APAI’s stated purpose of its evidence it will not deny any portion of the disbursements costs related to its production. The OEB accepts that the remaining costs are reasonable and relies on Mrs. Kilpatrick’s sworn affidavit in accepting that the costs were incurred for the purpose of this hearing.

The OEB also accepts APAI's response submission that Windlectric's concerns with respect to APAI's lack of adherence to the procedural schedule are not related to the legal costs being claimed.

The OEB notes that APAI is claiming \$879.58 HST costs on fees. The OEB will disallow the HST costs claimed since APAI was not HST registered. The OEB finds that APAI's total claim including disbursements will be revised to \$7,764.60.

The OEB finds that APAI is eligible for 100% of its reasonably incurred costs of participating in this proceeding subject to the adjustment referenced above. The OEB finds that APAI's cost claim, adjusted as described above, is reasonable and should be reimbursed by Windlectric.

#### **THE ONTARIO ENERGY BOARD ORDERS THAT:**

Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Windlectric shall immediately pay the Association to Protect Amherst Island \$7,764.60.

Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Windlectric shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

**DATED** at Toronto February 3, 2016

#### **ONTARIO ENERGY BOARD**

Original Signed By

Kirsten Walli  
Board Secretary