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Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Attention: Kirsten Walli, Board Secretary

OEB File No.: EB-2017-0364

Dear Ms. Walli:

Re: EB-2017-0364 – Cost claim - Bamkushwada Limited Partnership’s (“BLP’s”) reply to Hydro One Networks Inc.’s (“HONI’s”) objection

We write to provide BLP’s reply to HONI’s objection to its cost claim pursuant to s. 11.02 of the *Practice Direction on Cost Awards* (the “*Practice Direction*”).

HONI’s objection

HONI’s objection is as follows:

[BLP’s cost claim is] higher than the claims of other intervenors who were also actively involved in the technical conference and oral hearing. BLP engaged four separate counsels on the file.... The number of counsel and the time that each spent on various activities seems disproportionately long as compared to the other intervenors.

HONI does not tie this objection to one of the considerations set out in s. 5.01 of the *Practice Direction*, but it does not appear to deny that BLP:

- b) Contributed to a better understanding by the Board of one or more of the issues in the process
- c) Complied with the Board’s orders, rules, codes, guidelines, filing requirements... and any directions of the Board
- d) Made reasonable efforts to combine its intervention with that of one or more similarly interested parties, and to co-operate with all other parties

- e) Made reasonable efforts to ensure that its participation in the process, including its evidence, interrogatories and cross-examination, was not unduly repetitive and was focused on relevant and material issues, and
- f) Did not engage in any conduct that tended to lengthen the process unnecessarily.

The most charitable reading of HONI's objection is that BLP's high level of participation in the motion relative to other intervenors was irresponsible or inappropriate.¹ In BLP's submission, these are very high bars. The Board should not punish active, good-faith participation in a process except in extreme cases.

BLP's conduct was responsible and appropriate

BLP's level of participation was entirely responsible and appropriate. It has a significant interest in whether the Lake Superior Link or the East-West Tie obtains leave to construct. Either project is a major undertaking that passes through the traditional territories of BLP's six First Nation partners and will have significant impacts on their Aboriginal and treaty rights. BLP worked very hard to negotiate an agreement with Nextbridge that addressed the First Nations' concerns and gave them a meaningful stake in the East-West Tie Project. BLP is extremely concerned that HONI is rushing to obtain leave to construct for a competing project without allowing itself time to do the same.

It is irrelevant that BLP participated in the motion at a higher level than the other intervenors. The intervenors had different interests in the motion that necessitated different levels of participation. There is nothing inappropriate or irresponsible about participating more fully.

It was open to HONI to claim that BLP's costs were excessive because it failed to coordinate with other parties or that its evidence was repetitive or irrelevant. However, HONI has not done so. To the contrary, BLP consolidated the participation of six First Nations in the process. BLP's costs are less than \$10,000 per partner, which would be the smallest cost claim of all of the intervenors, if divided among the BLP First Nations.

HONI suggests that BLP's costs are irresponsible or inappropriate because it used four lawyers. The assumption buried in this argument is that BLP's costs would have been lower had it used fewer lawyers. The opposite is true. Counsel minimized their legal fees by allocating different tasks to lawyers with expertise in different areas, and making use of junior counsel to save on time spent by more senior (and more expensive) counsel. Had BLP used only Ms. Kempton, a partner at OKT, it would have cost more.

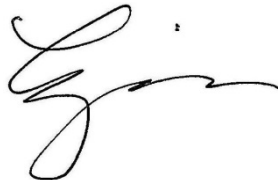
¹ *Practice Direction*, s. 5.01(a), (g).

Conclusion

BLP requests that the Board dismiss HONI's objection and grant BLP's cost claim in full.

Yours truly,

Olthuis, Kleer, Townshend LLP

A handwritten signature in black ink, appearing to read 'K. Kempton', with a stylized flourish at the end.

per KATE KEMPTON