

# COURT OF APPEAL FOR ONTARIO

CITATION: Greta Energy Inc. v. Pembina Pipeline Corporation, 2023 ONCA 9

DATE: 20230105

DOCKET: C70222

Gillese, Huscroft and Sossin JJ.A.

BETWEEN

Greta Energy Inc. and Great Grand Valley 2 Limited Partnership

Plaintiffs (Appellants)

and

Pembina Pipeline Corporation and BluEarth Renewables Inc.

Defendants (Respondents)

Brendan van Niejenhuis and Senwung Luk, for the appellants Greta Energy Inc.  
and Great Grand Valley 2 Limited Partnership

Mark A. Gelowitz and Sandy Hay, for the respondent Pembina Pipeline  
Corporation

R. Seumas M. Woods and Rebecca Torrance, for the respondent BluEarth  
Renewables Inc.

Justin H. Nasser and Avi Bourassa, for the intervener Ontario Petroleum Institute

Heard: September 12, 2022

Supplementary reasons to the reasons for decision in *Greta Energy Inc. v. Pembina Pipeline Corporation*, 2022 ONCA 783, released on November 17, 2022.

## ADDENDUM

[1] The appellants Greta Energy Inc. and Great Grand Valley 2 Limited Partnership sought leave to appeal the motion judge's decision on costs in their

Supplementary Notice of Appeal. The parties made submissions on the matter before this court, and this court allowed additional materials to be filed following the hearing. This matter was not addressed in this court's reasons for dismissing the appeal dated November 17, 2022 and is addressed in this addendum.

[2] Leave to appeal costs is denied for the reasons that follow.

[3] The motion judge awarded costs on a partial indemnity basis of \$450,000 to the respondent Pembina Pipeline Corp. ("Pembina") and \$500,000 to the respondent BluEarth Renewables Inc. ("BluEarth"). The motion judge considered and rejected the lower amounts suggested by the appellants, which she rejected as neither fair nor reasonable given the respondents' success, the complexity of the proceeding, the amounts at stake, and the conduct of the litigation.

[4] An award of costs is a discretionary decision that is entitled to deference. This court will set aside a costs award only if the motion judge made an error in principle or if the costs award is plainly wrong: *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9, [2004] 1 S.C.R. 303, at para. 27.

[5] The appellants sought leave to appeal costs on several bases, but at the hearing argued that the costs award was plainly wrong. We do not agree.

[6] The motion judge's costs award reflected a discount on amounts sought by both respondents. The appellants' argument that the respondents did not attribute time billed by unidentified timekeepers was addressed in submissions provided to

the motion judge. Pembina's costs submissions identified each timekeeper, their year of call, hourly rates, and hours claimed. Similarly, BluEarth in its reply costs submissions provided the names, years of call, and hours claimed of the timekeepers on its review team. This information was recognized by the motion judge. The appellants may disagree with the costs awarded, but there is no basis to conclude that they are plainly wrong.

[7] Accordingly, leave to appeal costs is denied.

[8] The award of costs to the respondents on the appeal in the agreed amount – \$40,000 all inclusive – included the appellants' request for leave to appeal the costs decision of the motion judge. Accordingly, the costs awarded remain unchanged.

"E.E. Gillese J.A."  
"Grant Huscroft J.A."  
"L. Sossin J.A."