



EB-2009-0120

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S. O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application by Yellow Falls
Power Limited Partnership for and Order granting leave to
construct a transmission line connecting a 16 megawatt
waterpower project to transmission system of Hydro One
Networks Inc.

PROCEDURAL ORDER NO. 1

Yellow Falls Power Limited Partnership (the “Applicant” or “YFP”) has filed an application with the Ontario Energy Board (the “Board”) dated April 27, 2009 under section 92 of the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B. The Applicant has applied for an order of the Board granting leave to construct transmission facilities connecting a 16 megawatt (“MW”) run-of-the river waterpower project located at Yellow Falls to the transmission system owned by Hydro One Network Inc. (“Hydro One”).

The Application has been assigned Board File No. EB-2009-0120.

The proposed transmission facilities consist of 25 kilometers of 115 kilovolt (“kV”) overhead transmission line, a customer transformer station stepping up voltage from 13.8 kV to 115 kV, and a customer switching station at the point of interconnection with Hydro One’s transmission system (collectively, the “Project”).

The Applicant has released the Final Environmental Assessment Report (the “EA”) for the Project in February, 2009, which is filed in support of this application. The EA has not yet received final approval from the Ministry of the Environment.

According to the application, the proposed facilities will be constructed and paid for by the Applicant, and therefore, there will be no rate impacts on Ontario's electricity consumers.

The Board issued a Notice of Application and Written Hearing on May 28, 2009. The Applicant has served and published the Notice as directed by the Board.

The Board received a request from Mark Massicotte for Observer Status on June 19, 2009, and on July 3, 2009 a letter of comment was received from Lehman and Associates on behalf of TransCanada informing the Board that it has no objection to the proposed application. However, the letter listed various requirements which the Applicant is to comply with in regard to the Project, and also requested that a copy of the Board decision be sent to its offices. Accordingly, the Board will list Lehman and Associates on behalf of TransCanada as an observer in this proceeding.

Wabun Tribal Council Request

The Board received a request for Intervention from the Wabun Tribal Council ("WTC") on June 23, 2009. In a correspondence dated July 8, 2009, WTC also requested eligibility for an award of costs.

WTC's request for intervenor status described various concerns regarding the Project, largely related to the EA that has been filed with the application, and what WTC views as a failure by the Crown to adequately consult with it. WTC also requested that an oral hearing be held instead of a written hearing.

The Board will grant WTC intervenor status and cost eligibility, but subject to the restrictions described below.

EA and the Duty to Consult

The Board's jurisdiction to consider issues in a s. 92 leave to construct case is limited by s. 96(2) of the *Ontario Energy Board Act, 1998*:

In an application under section 92, the Board shall only consider the interests of consumers with respect to prices and the reliability and quality of electricity service when, under

subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection is in the public interest. (Emphasis added)

This limitation means that, generally speaking, the Board does not have the jurisdiction to explore issues related to the EA approval. However, it is important to note that both the Leave to Construct and the EA approvals are required before the Project may proceed. Should this Board approve the leave to construct application, its order will be conditional on all necessary permits and authorizations being acquired, including a completed EA.

To the extent that there are Aboriginal consultation issues arising within the scope of the EA process, it is the Board's view that it is not appropriate to consider those issues in this proceeding. Given the limits on the Board's jurisdiction imposed by s. 96(2), it is the Board's view that the EA is clearly the preferable forum where Aboriginal consultation issues relating to environmental matters can be considered and addressed.

The Board will therefore not consider any submission in this proceeding relating to matters that are within the scope of the EA. Similarly, the Board will not require the Applicant to answer interrogatory questions on matters within the scope of the EA.

The extent of WTC's cost eligibility will also be restricted to matters directly within the scope of this proceeding. The Board will make no award of costs for costs related to the EA. Further information on what activities are eligible for costs, as well as forms and related materials, can be found in the Board's Practice Direction on Cost Awards, which is available on the Board's website.

Written Hearing

The Board has considered WTC's request for an oral hearing, but has determined that a written hearing is appropriate in this case.

The Board considers it necessary to make provision for the following items related to the Application. The Board may issue further procedural orders (relating, for example, to intervenor evidence and final submissions) from time to time.

THE BOARD ORDERS THAT:

1. Wabun Tribal Council and Board staff who wish information from the Applicant that is in addition to the evidence pre-filed with the Board and that is relevant to the hearing shall request the information by means of written interrogatories filed with the Board and delivered to the Applicant on or before **August 7, 2009**. All interrogatories and responses must include a reference to the section of the application which identifies the specific evidence on which the interrogatory is based.
2. Wabun Tribal Council and Board staff shall, on or before **August 7, 2009** indicate if it is their intention to file evidence.
3. The Applicant shall, no later than **August 17, 2009** file with the Board and deliver to all Intervenors, a complete response to each of the interrogatories.
4. All filings to the Board noted in this Procedural Order must be in the form of 2 hard copies and **must be received by the Board by 4:45 p.m. on the stated dates**. An electronic copy of the filing must also be provided. If you already have a user ID, the electronic copy of your filing should be submitted through the Board's web portal at www.errr.oeb.gov.on.ca. If you do not have a user ID, please visit the "e-Filing Services" page on the Board's website at www.oeb.gov.on.ca and fill out a user ID password request. For instructions on how to submit and naming conventions, please refer to the RESS Document Guidelines also found on the "e-Filing Services" webpage. If the Board's web portal is not available, the electronic copy of your filing may be submitted by e-mail at Boardsec@oeb.gov.on.ca . Those who do not have internet access are

required to submit the electronic copy of their filing on a CD or diskette in PDF format.

ISSUED at Toronto on July 24, 2009

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX 'A'

TO

PROCEDURAL ORDER NO. 1

Addresses of Applicant and Intervenor

EB-2009-0120

July 24, 2009

Appendix "A"

**Yellow Falls Power Limited Partnership
Leave to Construct
EB-2009-0120**

APPLICANT AND INTERVENOR

Applicant

Yellow Falls Power Limited
Partnership

Rep. and Address for Service

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Partnership**
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Intervenors

1. Wabun Tribal Council (WTC)

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