

May 4, 2011

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
Toronto ON  
M4P 1E4

Dear Madame:

**Re: Board File No.: EB-2011-0027  
Procedural Order No. 3 (the "Order") - Response to letter from Haldimand  
County Hydro Inc. ("HCHI")**

This letter is in response to HCHI's letter ("HCHI Letter") dated April 29, 2011, in which HCHI requests that the Board amend the schedule for submissions outlined in the Order of the above noted file, so that HCHI may ask follow up questions and further investigate the issues raised during the interrogatory process. Summerhaven Wind, LP (the "Applicant") objects to HCHI's request and does not agree with many of the submissions put forth by HCHI.

Although not framed as such, the HCHI Letter is a motion under Rule 42 of the Board's Rules of Practice requesting the Board to review an order. The Board recently confirmed the high threshold that an applicant is required to meet in order to bring such a motion, as follows: "Rule 44.01(a) requires that the grounds set out in support of a Motion for Review must raise questions concerning the correctness of the Order or Decision."<sup>1</sup> That test, which the Board applies to reviews of both final decisions and procedural orders,<sup>2</sup> is not met here. There is no question validly raised by HCHI regarding the correctness of the Order.

Further, the fact that the HCHI is seeking only an extension of time does not take away from their need to demonstrate the grounds for the request. In the same case, the Board noted: "When considering whether or not to extend timelines which are stipulated in the Rules, the Board must be satisfied that the circumstances underpinning the request justify the exercise of the Board's discretion to do so, or that it is otherwise in the public interest to do so." The Applicant respectfully submits that HCHI has not met the threshold to have the Order amended in the present circumstances.

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<sup>1</sup> *Ontario Energy Board*, EB-2011-0024 re Enbridge Gas Distribution Inc. for an Order pursuant to Section 90(1) of the Ontario Energy Board Act,

<sup>2</sup> The Board recently applied this test in reviewing a procedural order in its Decision on Motion in Toronto Hydro's CDM Application, Transcript, April 5, 2011, pp. 58-59.

In addition to the lack of legal basis underpinning the request for the Order to be amended, the HCHI Letter indicates that the Order establishes an accelerated timeline. This is not the case, since the timelines established in the Order mirror timelines established in most other leave to construct proceedings and are in no way accelerated. See for example, EB-2010-0243<sup>3</sup>, EB-2010-0150<sup>4</sup> and EB-2009-0315<sup>5</sup>.

Furthermore, the issues raised in the HCHI Letter all fall outside of the scope of a leave to construct hearing process. Pursuant to section 96(2) of the *Ontario Energy Board Act*, the Board should only consider (i) the interests of consumer with respect to prices and the reliability and quality of electricity service when deciding whether the construction of a transmission line is in the public interest, and (ii) whether the construction of the transmission line promotes the use of renewable energy sources consistent with the policies of the Government of Ontario.

HCHI states that it requires time to ask follow up questions and further investigate the issues raised during the interrogatory process and that such information is needed by HCHI's consultant in order that HCHI can characterize the potential impact on HCHI, its facilities and ratepayers. HCHI has had ample time to request information from the Applicant. This process began with the Applicant's initial request in January. The Applicant conducted discussions with HCHI long before the process even began and as early as September 24, 2010. The Applicant has always been available to HCHI to address any questions or concerns. Furthermore, the Applicant answered all interrogatories from HCHI with full disclosure and to the best of its abilities. To request a delay in the process one week prior to the filing of submissions with the Board is simply not appropriate.

To HCHI's specifics, the construction, development and operation of the Facility will be entirely funded by the Applicant. Furthermore, as the Applicant has communicated to HCHI in previous discussions, it is not the Applicant's intent to have HCHI ratepayers incur incremental costs in relation to the Facility. HCHI also states that if HCHI were required to enter into a joint use arrangement with the Applicant, issues of liability for any damages would be raised. As the parties are aware, the form of joint use agreements is currently not prescribed by the Board and parties are free to negotiate such agreements on their own behalf. In the event that the parties, at their discretion, choose to enter into joint use agreements, any issues related to liability for damages will be negotiated between HCHI and the Applicant as part of that process. Legal liability issues related to joint use are not within the scope of this proceeding. The Applicant also notes that joint use is being considered at the request of HCHI, since its shareholder, Haldimand County, does not want to have poles on both sides of the road.

The Applicant also notes that final technical design of a transmission line, including the exact placement of the poles, are not required in order to award an approval for a leave to construct, since often such issues can only be decided after the environmental permitting process is complete. The Applicant has met the requirements outlined by the Board and provided a

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<sup>3</sup> Procedural Order 2 ordered the applicant shall file its submission with the Board on November 5, 2010. Board staff and intervenors had to file final submissions with the Board by November 10, 2010. The applicant had to file its reply submission with the Board by November 15, 2010.

<sup>4</sup> Procedural Order 1 ordered applicant to file responses to interrogatories by May 28, 2010, intervenors and Board staff to file submissions by June 4, 2010 and the applicant to provide its reply to any submissions by intervenors or Board staff by June 11, 2010.

<sup>5</sup> Procedural Order 1 ordered the applicant to ordered applicant to file responses to interrogatories by October 26, 2009, intervenors and Board staff to file submissions by October 30, 2009 and the applicant to provide its reply to any submissions by intervenors or Board staff by November 6, 2009.

description of the physical design, operational details and lifecycle activities and has confirmed that the proposed Facility will meet or exceed the technical requirements outlined in the TSC.

With respect to HCHI's claim that it would be premature for the Board to decide the leave to construct issue absent a defined route, as stated in Exhibit B-6-1 of the Application, the route for the Transmission Line is established. However, the Applicant is attempting to move the 1500 meters of Transmission Line that currently fall within the municipal right-of-way to privately-owned land (the "Private Lands") in order to appease the requests of HCHI that the municipal right-of-way not be used. In the event that the Applicant is able to successfully enter into the Transmission Easement with the owners of the Private Lands, the Applicant will move the Transmission Line to the Private Lands. The Private Lands fall within the proposed Corridor and no new landowners will need to be notified.

Finally, the Applicant has had an open ended offer to discuss any of the above with HCHI at their convenience, and remains open to discussions at any time.

For the foregoing reasons, the Applicant does not believe that an amendment to the Order has any legal basis or is warranted at this point in time.

All of which is respectfully submitted,

McCarthy Tétrault LLP

*Executed in the original*

Per:

Kristyn Annis

c: Scott Goorland, Florida Power & Light Company  
Ben Greenhouse, NextEra Energy Canada, ULC  
Kristi Sebalj, Board Counsel  
Nabih Mikhail, Board Staff