



EB-2011-0027

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 Summerhaven
Wind LP for an Order granting leave to construct a new
transmission line and associated facilities for the
Summerhaven Wind Energy Centre.

PROCEDURAL ORDER NO. 4

On January 27, 2011, Summerhaven Wind LP ("Summerhaven" or the "Applicant") filed an application (the "Application") under Sections 92 and 97 of the *Ontario Energy Board Act, 1998* (the "Act") seeking leave to construct transmission facilities and approval of a form of easement to connect the Summerhaven Wind Energy Centre to the IESO-controlled grid. The work involves constructing 9 km 230kV of overhead transmission line and associated facilities in the County of Haldimand. The Board assigned file number EB-2011-0027 to this proceeding.

Five parties requested and were granted intervenor status in this proceeding.

On March 28, 2011, the Board issued Procedural Order No.2 establishing the schedule for interrogatories. Responses were received as specified in the Order.

On April 28, 2011 the Board issued Procedural Order No. 3 setting out dates for all parties to the proceeding who wish to make a submission that is relevant to the hearing to do so, and for the Applicant to respond to any such submissions. In that Order the Board also confirmed that it will proceed by way of a written hearing.

Request by Haldimand County Hydro Inc. for Further Information

On April 29, 2011 the Board received a letter from Haldimand County Hydro Inc.

("HCHI") requesting a delay from the schedule for submissions in Procedural Order No. 3 so that HCHI may ask follow up questions and further investigate the issues raised during the interrogatory process. HCHI advised that this information is needed by HCHI's consultant, Kinectrics, in order that HCHI can characterize the potential impact on HCHI, its facilities and ratepayers. HCHI emphasized that it made several requests in its interrogatories pertaining to the potential joint use of poles and the technical design of the Applicant. HCHI also indicated that the Applicant acknowledges co-location within rights-of-way but not within a limited municipal right-of-way as proposed in its Application.

HCHI contends that without such information HCHI can not provide evidence nor can it properly make detailed submissions and the Board will not have the proper evidentiary foundation to conclude the proposal is in the public interest. The Applicant further submitted that service quality and reliability are statutory requirements for the Board to consider in leave to construct proceedings and that the questions posed by HCHI and the information requested go directly to ensuring a proper evidentiary record exists to ensure the proposed transmission line will not have a detrimental impact. HCHI also submitted that the Applicant indicated that it may opt to use a different route solely on privately owned lands. Therefore, the Board is left to decide the leave to construct issue in the absence of a defined route.

Applicant Response to Request for Further Information

On May 4, 2011 the Applicant responded to HCHI's letter dated April 29, 2011 objecting to HCHI's request and disagreeing with many of the submissions put forth by HCHI. The Applicant contended that HCHI's request is in substance a motion under Rule 42 of the Board's Rules of Practice and Procedure and that HCHI had failed to meet the threshold test for hearing such a motion. The Applicant also took issue with the suggestion by HCHI that the Board's hearing was proceeding on an accelerated timeline.

The Applicant also asserted that the issues raised by HCHI all fall outside the scope of a leave to construct hearing process and finally that, the applicant has involved HCHI in discussions regarding the project as early as September of 2010 and has always been available to HCHI to address any questions or concerns. The Applicant contends that it answered all interrogatories from HCHI with full disclosure and to the best of its abilities and that to request a delay in the process one week prior to the filing of submissions with the Board is simply not appropriate.

The Applicant then confirmed some aspects of its application, including issues related to the funding of the project and routing before concluding that an amendment to the Procedural Order is without any legal basis and is not warranted at this point in time.

Motion by Haldimand County Hydro Inc.

On April 29, 2011 HCHI also filed a Motion to defer the final decision in this proceeding, as well as defer the final decision in another proceeding (file number EB-2011-0063) by Grand Renewable Wind LP seeking leave of the Board to construct transmission facilities in Haldimand County. The Motion requests, among other things, that the Board defer any final decision in EB-2011-0027 and EB-2011-0063 until the Board has conducted a generic proceeding to decide issues of general application to the development of transmission lines in municipal rights-of-way ("ROW"). HCHI indicates that a generic hearing would establish principles for distributors, generators and transmitters to guide the methods and expectations for connections to and expansion of the grid and the efficient delivery of electricity.

Board Findings – Request for Further Information

The Board disagrees with the Applicant's characterization of HCHI's request as a motion under Rule 42 of the Board's Rules of Practice and Procedure. Rule 42 is intended to address requests to review all or part of a final order or decision of the Board. Procedural Orders of the Board are specifically contemplated to be amended or supplemented from time to time. Rule 4.01 specifically empowers the Board to make orders with respect to the procedure and practices that apply in its proceedings and Rule 4.03 specifically permits the Board to amend any procedural order at any time.

The Board notes that it does not extend timelines without being satisfied by applicants, parties, Board staff or on the Board's own accord that additional time or additional procedural steps are required. While the Board acknowledges Summerhaven's submissions to the effect that it has been in discussions with HCHI with respect to the project that is the subject of this Application for some time, the Board's primary concern is the leave to construct process and, in particular, ensuring that all the relevant evidence that is needed for the Board to make its decision in the public interest is on the record.

The Board has determined that that there is merit in allowing parties and Board staff

another opportunity to ask questions regarding the Application. The Board will therefore extend the discovery phase of this proceeding in order to allow all parties to ask follow-up questions in respect of the answers provided by the Applicant as part of the written interrogatory process. To that end, the Board will hold a technical conference, which will be transcribed and will form part of the evidentiary record in this proceeding.

Following the conclusion of the technical conference, the Board will issue further direction for the remainder of the proceeding, including consideration, if any, of the HCHI Motion.

The Board considers it necessary to make provision for the following procedural matters related to the Application. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. Procedural Order No. 3 is rescinded.
2. A technical conference will be held at the Board's Offices 2300 Yonge Street, Toronto on the 25th floor in the West Hearing Room commencing **Monday, May 16, 2011** at 9:30 a.m. and, if necessary, continuing on **Tuesday, May 17, 2011** at 9:30 a.m.

All filings to the Board must quote file number EB-2011-0027. You must file two paper copies and an electronic copy through the OEB Web Portal at www.errr.ontarioenergyboard.ca. If you do not have a user ID, please visit the "e-Filing Services" page on the Board's website at www.ontarioenergyboard.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. Alternately, the electronic copy of the documents may be submitted by e-mail to the Board Secretary at BoardSec@ontarioenergyboard.ca. Those who do not have internet access are required to submit the electronic copy on a CD. All electronic filings are to be in searchable/unprotected PDF format. Parties must also include the Case Manager, Nabih Mikhail at nabih.mikhail@ontarioenergyboard.ca and Board Counsel, Kristi Sebalj at kristi.sebalj@ontarioenergyboard.ca on all electronic correspondence related to this case.

DATED at Toronto May 5, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary