



**EB-2011-0027**

**EB-2011-0063**

**EB-2011-0127**

**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.

**AND IN THE MATTER OF** an application by Grand  
Renewable Wind LP for an Order or Orders granting leave  
to construct new transmission facilities within Haldimand  
County, Ontario.

**AND IN THE MATTER OF** a Notice of Motion filed by  
Haldimand County Hydro Inc. for an Order or Orders of the  
Board in relation to, *inter alia*, the deferral of any final  
decision in EB-2011-0027 and EB-2011-0063 until the  
Board has conducted a generic proceeding to decide  
issues of general applicability to the development of  
transmission lines in municipal rights-of-way.

**BEFORE:** Cynthia Chaplin  
Vice-Chair and Presiding Member

Ken Quesnelle  
Member

Cathy Spoel  
Member

**DECISION AND ORDER ON MOTION**

## Background

Haldimand County Hydro Inc. (“HCHI”) is an intervenor in or has applied for intervenor status in two active Ontario Energy Board (“Board”) proceedings. The first such proceeding, under docket number EB-2011-0027, is an application by Summerhaven Wind LP (“Summerhaven”) for an Order granting leave to construct a new transmission line and associated facilities for the Summerhaven Wind Energy Centre (the “Summerhaven proceeding”). The second such proceeding, under docket number EB-2011-0063, is an application by Grand Renewable Wind LP (“GRW”) for an Order or Orders granting leave to construct new transmission facilities within Haldimand County, Ontario (the “GRW proceeding”). Collectively, the two proceedings will be referred to herein as the “the Applications”.

## Notice of Motion

On April 29, 2011 HCHI filed with the Board a Notice of Motion under both proceedings for an order or orders of the Board to:

- (a) 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 applicability to the development of transmission lines in municipal rights-of-way (“ROW”) and to 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;
- (b) To establish procedures for the publication, notice, participation and scheduling such proceeding; and
- (c) Provide such other relief as the Board deems just and reasonable.

HCHI states that the Applications are for leave to construct 230 kV transmission lines in Haldimand County to connect wind power facilities to the Hydro One Networks Inc. transmission network and that while neither of the proposed transmission lines will connect to the HCHI distribution system, each of Summerhaven and GRW has proposed to construct significant segments of the proposed transmission lines within the municipal right-of-way (“ROW”) pursuant to section 41 of the *Electricity Act, 1998* (the “*Electricity Act*”). HCHI asserts that if the Applications are approved as currently

proposed to use the municipal ROW, the projects will have an impact upon HCHI and potentially, HCHI's ratepayers. HCHI asserts that the Board must consider the impacts upon HCHI and its ratepayers as part of its scope of authority under section 96 of the *Ontario Energy Board Act, 1998* (the "Act") even though the transmission assets in questions are not connecting to HCHI's distribution system.

In the Notice of Motion HCHI lists a number of generic issues that it asserts are of importance to the electricity industry, including, by way of summary:

- a. Whether and under what circumstances the Board can order the transmission line to be located underground;
- b. Whether transmitters and distributors are permitted to locate poles on both sides of municipal ROWs;
- c. Issues related to whether transmitters and distributors are required to enter into joint use pole agreements and space requirements where there is joint use of poles;
- d. Issues related to the appropriate form and content of land rights that should be granted by a municipality to transmitters for access to ROWs;
- e. Issues related to cost recovery for impacts to distributors from the location by transmitters of their lines/equipment in the ROW;
- f. Issues related to potential impacts to quality of service and reliability impacts, such as induction and stray voltage that may result from overhead transmission lines; and
- g. Issues related to the intersection of the Board's authority granted by section 19(6) of the Act with the Ministry of the Environment's authority in issuing a Renewable Energy Approval pursuant to its authority in the *Environmental Protection Act*.

HCHI expresses the view that if these issues are not considered in a generic forum, they will be revisited on multiple occasions in the future due to the potential for additional generation projects connecting to the transmission grid. It goes on to provide support for the contention that additional leave to construct proceedings for transmission lines to be located in municipal ROWs will arise in the future. It also lists a number of reasons that it believes that locating transmission facilities in municipal ROWs will increasingly be a preferred option and quite possibly the default option for generators.

HCHI also expresses the view that transmission lines associated with generation do not serve the ratepayers in the same manner as those of traditional rate regulated transmission companies and that an influx of transmitters and the different obligations of traditional rate regulated transmission companies as compared to single purpose transmission assets will affect the balancing of interests under section 41 of the *Electricity Act*.

HCHI is of the view that the request for a generic proceeding is consistent with and would further the Board's agenda for rational, efficient regional planning and that the incorporation of wind projects into a regional planning framework would be of benefit to distributors and ratepayers. HCHI references the Board's consultative proceeding under docket number EB-2011-0043 intended to develop a regulatory framework for regional planning.

The Notice of Motion also references other jurisdictions where it is contended that steps have been taken to review the issue of locating transmission line in ROWs and provides evidence in support of this contention.

HCHI indicates that it has brought the motion for an orderly consideration of the issues that may arise related to the connection of generation projects and the use of the municipal ROW. HCHI submits that

a considered approach to the general issues will result in a more efficient review of future specific projects rather than having a specific situation create rules of general application which are given precedential significance with the considered approach of establishing industry standards.

### **Response to Motion by Summerhaven and GRW**

On May 4, 2011 Summerhaven's counsel filed a response to HCHI's Notice of Motion requesting that the Board dismiss the Motion without a hearing. Summerhaven asserts that HCHI has no legal entitlement to bring a motion requesting that the Board commence a hearing and that the panel for the Summerhaven application does not have the ability to order the commencement of a hearing.

Summerhaven suggests that the topics requested to be addressed in the generic hearing are outside of the Board's jurisdiction and that those that are within the Board's general statutory jurisdiction are not within the matters that the Board may consider in a

leave to construct application pursuant to subsection 96(2) of the Act. Summerhaven suggests that for those matters that are within the Board's authority under subsection 96(2), HCHI and other interested parties may make legal submission in the leave to construct application.

Summerhaven goes on to cite the Board's authority under section 19(4) and 21(2) of the Act to commence proceedings on its own motion, but asserts that while a party may always make a request for the Board to commence a proceeding, there is no legal entitlement for any person to bring a motion to commence a proceeding.

Summerhaven goes on to express concern about the late stage in the leave to construct proceeding at which HCHI is raising the issues it does in the Notice of Motion, the length of time it would take the Board to consider these issues in a generic fashion and the delay that it would cause if the Board were to defer its decision in the Summerhaven leave to construct pending a determination on the generic issues.

A response was also received from GRW's counsel on May 4, 2011. That letter makes virtually identical submissions as those in the Summerhaven letter with the exception only that, because the GRW proceeding is in the early stages, there was no submission with respect to the late stage at which HCHI is raising these issues.

### **Board Findings**

The Board has determined that it will dismiss HCHI's Motion without a hearing.

This Board panel does not have the authority to grant the relief sought by HCHI. A single panel of the Board does not have the authority to initiate a generic proceeding.

A generic proceeding may be initiated on the Board's own motion, pursuant to the authority provided in subsections 19(4) and 21(1) of the Act, but this exercise must be undertaken by the Board as a whole. While it is acceptable for a person to make a request to the Board to initiate a proceeding, including a generic proceeding, and while the Board may review such a request, the Board is not required to consider the request, to constitute the proceeding requested or to hear the matter. Individual panels of the Board are established to decide on particular applications only, and only on issues which are within the scope of the particular proceeding.

Even if the request of HCHI was made to or considered by the Board as a whole, this panel is of the view that the issues raised would not be appropriately heard by way of a generic proceeding at this time.

A generic hearing may be warranted when a question or questions that are sufficiently similar amongst a number of parties and that are clearly within the jurisdiction of the Board to determine have arisen and are likely to continue to arise in the context of Board proceedings. In other words, there is normally an ongoing question or issue that is raised in a number of individual cases before the Board and the Board determines based on the unique facts related to that question or issue that, on balance, the most efficient way of addressing the question or issue is by way of generic hearing. Normally, there is a “body of work” or of evidence upon which the Board can draw to address the question or issue in a generic fashion. Generally, generic proceedings are constituted in relation to rate setting matters.

Even when some or all of the above criteria are met, the Board may determine, given the nature of the issue or of the parties affected by the issue or even of the applicable timelines related to the issue, that a generic hearing is not the best approach. This is often the case for issues which are not directly related to rates. The Board can and has addressed issues that might otherwise be amenable to determination by way of generic hearing using other tools such as consultations, code development or amendment initiatives or other processes that are more appropriate to the individual circumstances.

In this case, even by HCHI’s own evidence, the issues raised by HCHI are new and arise as a result of a policy shift and a change in the way that transmission lines are owned and operated and in the obligations that are associated with transmission line ownership in the province. There are no other current applications before the Board where these issues have been raised. There is also no “body of work” or past evidence from prior applications upon which the Board could meaningfully draw to address the issues. The only party that has raised these issues to date is HCHI. As such, the Board can not conclude, at this time, that there are similarly affected parties that would benefit from addressing the issues on a generic basis. Further, there is some question as to whether all of the issues are appropriately within the Board’s jurisdiction to determine, either within the context of a leave to construct application, or otherwise. As a result, the panel is of the view that even if the Board was prepared to consider these issues on a generic basis, it would be premature to do so at this time.

The Board notes that some or all of these issues may properly be considered as part of the Board's Regional Planning initiative, but makes no determination as to whether or to what extent the issues may be accommodated within the scope of that exercise.

The Board further observes that at this time, HCHI has raised some of the issues that it cites in the Notice of Motion in the Summerhaven proceeding. The Board is of the view that any issues related to the development of the proposed transmission lines by Summerhaven and GRW are most appropriately raised and addressed within the context of those proceedings as long as they are relevant and within the Board's jurisdiction to hear and determine.

**THE BOARD THEREFORE ORDERS THAT** the Notice of Motion filed by HCHI is hereby dismissed without a hearing.

**ISSUED** at Toronto, May 30, 2011

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary