



Fraser Milner Casgrain LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON, Canada M5K 0A1

MAIN 416 863 4511
FAX 416 863 4592

VIA Electronic Filing & Courier

Helen Newland
helen.newland@fmc-law.com
DIRECT 416 863 4471

July 29, 2011

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
PO Box 2319, 27th Floor
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: Capital Power GP Holdings Inc.;
Board File No.: EB-2011-0027

I am writing to file the reply submissions of Capital Power GP Holdings Inc. on behalf of Capital Power GP Holdings Inc., in accordance with Procedural Order No. 7, dated, June 22, 2011 and a letter from the Board dated June 27, 2011.

Yours very truly,

HTN/ko

Encls.

cc: Kristyn Annis
McCarthy Tétrault LLP

All Intervenors
Nabih Mikhail
Kristi Sebalj
Boris de Jonge
Anthony Zlahtic

IN THE MATTER OF the *Ontario Energy 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

REPLY SUBMISSIONS¹ OF CAPITAL POWER GP HOLDINGS INC.

on behalf of

CAPITAL POWER GP HOLDINGS INC.,

as General Partner of Capital Power L.P.

1. Overview

These submissions are filed on behalf of Capital Power GP Holdings Inc., in its capacity as general partner of Capital Power L.P. ("**Capital Power**"), in reply to the revised submissions of the Independent Electricity System Operator ("**IESO**") dated June 22, 2011. These submissions address the IESO's recommendation for a common connection facility to be shared by Capital Power's Port Dover and Nanticoke Wind Project ("**PDNW**" or "**Project**") and the Summerhaven Wind Energy Centre ("**Summerhaven**").

The IESO asserts that the approval of a common connection is a matter of "timing and convenience". To the contrary, the proposed common connection threatens Capital Power's ability to complete the Project. As outlined in Capital Power's submissions filed June 22, 2011, the approval of a common connection facility subjects the Project to unreasonable delay which, in turn, will prevent Capital Power from meeting its contractual obligations, thereby jeopardizing Capital Power's ability to complete the Project. The failure of the Project would be contrary to the public interest as defined by subsection 96(2) of the *Ontario Energy Board Act, 1998* (the "**Act**"),² specifically, the promotion of the use of renewable energy sources.

2. A Common Connection is Contrary to the Public Interest in this Case

At the outset, it should be reiterated that Capital Power does not object, *per se*, to a common connection. Capital Power confirmed this at the Technical Conference.³ Rather, Capital Power objects to the approval of a common connection in circumstances, as is the case here, where such a connection

¹ These submissions are made pursuant to Procedural Order No. 7 dated June 22, 2011, as supplemented by the letter dated June 27, 2011 from the Board Secretary.

² S.O.1998, c. 15, Sched. B.

³ *Transcript of the Ontario Energy Board Technical Conference held on May 17, 2011* ("*Transcript*") at pp. 94-95.

would unduly delay the completion of the Project, thereby causing Capital Power to breach its contractual obligations and risking its ability to complete the Project. Capital Power agrees with the submissions of Ontario Energy Board Staff (“Staff”) that it would be “highly impractical” for the Board to order a common connection in the circumstances of this case.⁴ Capital Power further agrees with Staff⁵ that it would be beneficial for existing and potential industry participants and stakeholders if the Board were to issue guidance and direction, *on a prospective basis*, on the common connection issue.

The IESO asserts that it presented its preliminary findings and final report in a timely fashion which provided “ample time” for the accommodation of a common connection. However, as Capital Power made clear during the Technical Conference,⁶ developers of renewable energy projects such as the Project and Summerhaven, while aware of the requirement for the completion of a System Impact Assessment, must balance several competing requirements, including: (i) contractually mandated timetables; (ii) obtaining the requisite environmental and other permits; and (iii) acquiring the necessary equipment and land for the Project and connection facility. In this regard, Haldimand County Hydro Inc. (“Haldimand”) described the common connection issue as a “novel” situation.⁷ In such novel circumstances, and given the significant risks facing Capital Power, the approval of a common connection, in the circumstances of this case, does not accord with the public interest.

The IESO also asserts that the issue of a common connection facility is a matter of “convenience” as it would adversely impact the Renewable Energy Approval (“REA”) process and that such matters are outside the Board’s jurisdiction (as the Board itself confirmed in Procedural Order No. 2 dated March 28, 2011). However, the IESO’s submission in this regard overlooks the fact that Capital Power does not rely on the REA process itself as the grounds upon which the Board should determine that a common connection is not in the public interest. Instead, Capital Power relies on the unreasonable delay and related prejudice (i.e. breach of contractual obligations and risk that the Project will not be completed) that it faces if a common connection is approved.

This distinction is important. In its submissions dated June 22, 2011, Capital Power described in detail the REA process that it had undertaken to date, as well as the process that would be required if a common connection is ordered, so that the Board would understand the reason why Capital Power faces unreasonable delay and the Project will be jeopardized if a common connection point is imposed. The reason (in this case, the necessary environmental approvals), however, is in certain respects immaterial. It is the fact of the delay and the threat to Capital Power’s ability to complete the Project which impacts the public interest. In particular, as alluded to above, the risk to the Project arising from a common connection is contrary to the promotion of the use of renewable energy resources.

⁴ *Submissions of Staff* dated June 22, 2011 (“*Staff Submissions*”) at p. 13: “Board staff, however, also agrees with Hydro One’s response to the IESO’s interrogatory #3 List 1. Hydro One indicates that because the final SIAs related to each of the Summerhaven and PDNW projects were issued after the respective REA processes had begun, the common station option was infeasible from a practical perspective. In other words, by the time the common switching station recommendation was expressed in the final SIA studies, the proponents were quite far along in seeking other required permits and approvals for each of their projects. In Board staff’s view, while it would not be impossible for the Board to require Summerhaven to comply with the final SIA recommendation, it would be highly impractical under the circumstances as the evidence indicates that this would cause significant economic hardship to the project and may jeopardize the project altogether based on existing contractual arrangements [emphasis added].”

⁵ *Staff Submissions* at p. 14.

⁶ *Transcript* at pp. 95-96.

⁷ *Submissions of Haldimand* dated June 22, 2011 at p. 10, para. 56.

Notably, the IESO acknowledges in its submissions that the “single switching station option did not have a material impact on reliability requirements”. The IESO further argues that a “superior connection option” should be implemented where it “can be reasonably accommodated [emphasis added]” and where it will lead to greater collaboration amongst developers and an improved power system. In this case, a common connection cannot “reasonably” be accommodated and is contrary to the public interest for the reasons set out herein and in Capital Power’s submissions dated June 22, 2011. However, the public interest may be served going forward were the Board to issue guidance, on a prospective basis, in relation to the possibility of future common connections.

3. Conclusion

In the circumstances of this case, the approval of a common connection to be shared by the Project and Summerhaven will lead to unreasonable delay, which in turn will cause Capital Power to breach contractual obligations and in the result, will jeopardize the Project. In such circumstances, it is respectfully submitted that an order mandating a common connection does not accord with the promotion of the use of renewable energy resources in Ontario, pursuant to subsection 96(2) of the Act.

In addition, it is further respectfully submitted that the public interest, as reflected in the interests of consumers with respect to prices and the reliability and quality of electricity service, will be served by the issuance of guidance or directions by the Board respecting the *future* relevance of potential common connections for developers and other industry stakeholders.