

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application by South Kent
Wind LP for an Order or Orders pursuant to section 92 of the
Ontario Energy Board Act, 1998 (as amended) granting leave
to construct transmission facilities in Chatham-Kent, Ontario.

INTERROGATORY RESPONSES

A. BOARD STAFF:

Interrogatory 1: Land Matters – Corridor Line

Preamble: At Ex B/T4/S1/p.1, South Kent Wind LP (SKW) provides a detailed description of the proposed route and the necessary land rights. With respect to the Corridor line, SKW also notes that it intends to acquire the necessary land rights for the western portion of the ‘Corridor’ from the Canadian Southern Railway Company (CSR) and easements from Chatham-Kent Transmission (CKT) with respect to the eastern portion of the ‘Corridor’.

(a) Please provide a detailed update on the status of these negotiations, whether SKW is confident that the agreements will be executed as noted and a timeline of when the agreements will be executed.

(b) Are there are there any concerns that SKW is aware of that would suggest to SKW that the execution of the above agreements may be delayed or not executed at all. Please provide a description of such concerns, if any.

(c) How does SKW expect to proceed if the referenced land rights are not obtained?

Preamble: At Ex A/T3/S1/p3, SKW states: “There are two rail lines within the Corridor. One is abandoned and the other is scheduled for abandonment at the end of July 2011”.

(d) With reference to the above, has the stated railway line abandonment been completed as scheduled? If the subject abandonment has not been completed, please indicate why it has been delayed and when does SKW expect the abandonment to be completed?

Responses:

(a) SKW confirms that CKT has obtained a registered easement from CSR in respect of the western portion of the ‘Corridor’. This easement was registered in favour of CKT on or about August 5, 2011. Further, SKW confirms that through an affiliate it has secured contractual rights with CKT with respect

to, *inter alia*, the granting of an easement by CKT to SKW over the western and eastern portions of the 'Corridor'. SKW confirms that the sub-easement and easement to be registered in favour of SKW in respect of the western and eastern portions, respectively, are currently under negotiation between the parties. Settlement and registration of the necessary real property rights in favour of SKW is expected to occur on or prior to September 30, 2011.

(b) SKW has no reason to believe that the execution of the necessary agreements will be delayed or not executed at all.

(c) While SKW fully expects to obtain the necessary land rights, it has been actively entering into option agreements with private landowners with properties adjacent to the railway right-of-way, providing for a substantially similar alignment to the railbed alignment. To date, approximately 80% of the linear acreage has been optioned for this alternate route, however it is not expected to be required.

(d) The abandonment process is on schedule but has not been completed. SKW has obtained an easement to use the rail property with or without an operating rail line on the rail property, so the right to use the land for a transmission line is independent of the abandonment process.

Interrogatory 2: Land Matters – Tie Line

Preamble: At Ex B/T4/S1/p.2, SKW states:

From the Corridor Line, the first part of the Tie Line will run for approximately 3.24 km north on seven privately owned properties (farms) to the Safety Village located at 21797 Fargo Road on the south side of Highway 401. From the south end of the Safety Village, the Tie Line will cross west over a railway line onto the municipal right-of-way ("ROW") and will continue north along the ROW for 0.76km, cross Highway 401, and then continue north on a private property for 0.35km. It will then turn approximately 90 degrees west and travel for 0.53km, then turn approximately 90 degrees south and travel for 0.35km, then turn approximately 90 degrees west and travel for 0.9km, crossing Communication Road to another private landowner, and continue for 0.5km to Hydro One's Access Road where the Tie Line will turn one final time approximately 90 degrees south and travel for 0.26km to the Hydro One SS.

For the portions of the Tie Line that will require easements from private landowners, the form of easement agreement is at Exhibit B, Tab 4, Schedule 6(i). For the portion of the Tie Line that will run along the municipal ROW, the Applicant expects to be in a position to file the form of agreement within the next few weeks. A Placeholder has been created in the pre-filed evidence at Exhibit B, Tab 4, Schedule 6(ii) for this form of agreement".

Further, at Ex B/T4/S4/p.2, SKW states:

"Ultimately, the proposed route for the Tie Line portion of the Transmission Project was found to be optimal because there are willing private land owners (5 of the 7 south of Highway 401 have indicated a willingness to grant an easement); and (ii) only a maximum of 9 private landowners will be affected".

- (a) What is the status of the negotiations with each of the 9 private landowners in relation to the Tie line and is SKW still confident that it will be able to acquire the easements from all 9 landowners as noted?
- (b) Please list all landowners that have agreed to grant SKW the necessary easements and those landowners that have not?
- (c) Please identify those landowners that have executed the Easement Agreement.
- (d) What is the status of the negotiations in relation to acquiring the easements for the municipal ROW (referenced at Ex B/T4/S4/p.2)?
- (e) Are there any concerns that SKW is aware of that would suggest to SKW that the execution of the above agreements (i.e. with the 9 private landowners and the municipal ROW) may be delayed or not executed at all. Please provide a description of such concerns, if any.
- (f) Please explain how does SKW intend to proceed if the easement agreements (i.e. with the 9 private landowners and the municipal ROW) are not executed?

Responses:

(a) SKW is in the process of finalizing negotiations and executing easements with all nine (9) private landowners on the north-south portion of the tie-line. SKW confirms that all nine (9) private landowners have indicated a willingness to execute a transmission easement and that the terms and conditions of each of the easement agreements have been settled with each landowner. Each landowner made reasonable contractual and financial requests of SKW upon their review of the form of Option and Easement Agreement and SKW has agreed to substantially all of the requests. SKW reasonably estimates that seven (7) of the landowners (located south of Highway 401) will be executed on or prior to August 25, 2011 and two (2) of the landowners (located north of Highway 401) to be executed on or prior to August 31, 2011.

(b) As of the date hereof, all nine (9) landowners have indicated a willingness to execute a transmission easement and that the terms and conditions of each of the easement agreements have been settled with each landowner. No landowners have executed easements as of the date hereof.

(c) Please see responses in (a) and (b) above.

(d) SKW and the Municipality of Chatham-Kent have agreed in concept to the granting of a registered easement with respect to the Municipal ROW – an easement is currently under negotiation with the Municipality of Chatham-Kent and is expected to be executed in the coming weeks following completion of boundary and topographical surveys of the subject lands.

(e) No. Please see responses in (a) and (b) above.

(f) SKW would examine alternative routes, including an adjacent Municipal ROW pursuant to response (d) above, for the Tie-Line, however SKW has no reason to believe that it will not obtain the necessary land private rights.

Interrogatory 3: SIA/CIA

At Ex A/T3/S1/p.5, SKW states: “We note the location of the Tie Line has been moved approximately 3 km west since the SIA was completed. The Applicant does not believe that this change should impact the conclusions in the SIA, but nevertheless advised the IESO of this development”.

(a) Please consult with the IESO and confirm if the SIA that has been submitted is adequate or if the IESO intends to re-issue the SIA?

(b) SKW has filed a final CIA as part of its pre-filed evidence. However, in the evidence, SKW has not indicated if the matter related to the change in route was communicated to Hydro One and whether this change affects the final CIA. Please indicate if Hydro One was notified or has been notified of the change in route? Please consult with Hydro One and confirm if the CIA that has been submitted needs to be re-done as a result of the change in route?

Responses:

(a) SKW has described the change to the IESO and they have verbally confirmed that there will be no need to reissue the SIA. SKW will formally submit the changes to the IESO. Grid impacts such as fault contribution will go down slightly so main grid impacts will remain essentially unchanged or be reduced slightly.

(b) SKW has not formally notified HONI of the small change in route, but has discussed the change with HONI verbally. HONI has verbally indicated that the CIA will not need to be re-done as a result of the route change. SKW will formally notify the IESO, who in turn will formally notify HONI.

Interrogatory 4: REA

At Ex A/T3/S1/p.3, SKW has provided a brief description of the Renewable Energy Approval process.

Please indicate the steps in the REA process that have already taken place, what steps will occur in the future and a time line for these future steps and when does SKW expect to receive final approval under the REA process.

Response:

The steps completed are listed as follows. Note that these steps are not necessarily in sequential order as many of these overlap or are completed throughout the process.

1. Provided Project Description Report to MOE and in turn received Aboriginal communities to consult with.
2. Notice of Proposal to Engage in Project and First Public Meeting published in local newspaper, Aboriginal newspapers and sent to all landowners within the Project area, Aboriginal communities and Municipality of Chatham-Kent.
3. Held first public meetings on November 22 and 23, 2010.
4. Completed all natural heritage reports (Natural Heritage Records Review, Natural Heritage Site Investigation, Natural Heritage Evaluation of Significance and Environmental Impact Study) and sent to MNR for review.
5. Completed Stage 1 and 2 Archaeological Assessments and sent to MTC for review.
6. Notice of Final Public Meeting published in local newspaper, Aboriginal newspapers and sent to all landowners within the Project area, Aboriginal communities and Municipality of Chatham-Kent which included notice of Projects reports available for review.
7. Sent all Project reports to Municipality of Chatham-Kent and Aboriginal communities. Reports include Project Description Report, Construction Plan Report, Design and Operations Report, Decommissioning Plan Report, natural heritage reports as listed in bullet #4 above, Water Body Records Review Report, Water Body Site Investigation Report, Water Body Environmental Impact Assessment, Wind Turbine Specifications Report, Executive Summary and Noise Assessment Report.
8. Posted all Project reports (as listed in bullet #7 above) on the Project website.

The steps to be completed are listed as follows. Note, as above, these steps are not necessarily in sequential order as many of these overlap or are completed throughout the process.

1. Finalize Draft Site Plan and publish Notice of Draft Site Plan in local newspaper and Aboriginal newspapers and send to Municipality of Chatham-Kent, landowners within 550 m of the Project, MOE Director and MOE District Manager. Place Notice and Draft Site Plan on Project website. [August 31, 2011]
2. Hold Final Public Meeting. [September 24, 2011]
3. Prepare REA Application, finalize all documentation and prepare Consultation Report. [September 29, 2011]
4. Submit REA Application and all documentation to MOE. [September 30, 2011]

5. After REA Application is deemed complete by MOE and posted on the Environmental Registry, a Notice of EBR Posting will be published in the local newspaper and Aboriginal newspapers. [October 4, 2011 for complete submission]
6. REA Approval. [by February 28, 2012]

Interrogatory 5: Project Cost:

At Ex A/T3/S1/p.6, SKW states: "The Transmission Project and the cost of connecting to HONI's Chatham Switching Station will be paid for by the Applicant. Therefore the cost the Transmission Project and the connection to the Chatham Switching Station will have no impact on transmission rates in Ontario".

(a) What is the approximate cost of the "Transmission Project"? In your response, please provide the approximate costs for each of the components (i.e., the Corridor Line, the Tie Line, Collector Substations and the Metering Station).

Preamble: At Ex B/T4/S1/p.2, SKW states: "...As described by CKT in its electricity transmitter licence application (EB-2010-0351), when construction of the Transmission Project is completed, the Applicant intends to sell the Transmission Project to CKT".

(b) Please file the evidence that is referenced above in relation to the sale of assets to CKT. In your response please indicate when the sale/transfer will take place, confirm that there will be no impact on transmission rates in Ontario as a result of the sale and provide any commercial agreements between CKT and Pattern that may have been executed in relation to the sale of assets.

Responses:

(a) Refined actual costs will be part of the EPC process which includes final design. HONI is in the cost estimating part of the interconnection process but as yet has not provided any estimates of the work to be performed on their system. SKW has a high level estimate of \$30 million dollars for the transmission and transmission interconnection to the HONI system.

(b) CKT's transmission licence application is attached as Attachment "A". The sale is expected to take place in January of 2013. As set out on page 4 of CKT's application, CKT does not intend to socialize its costs associated with the proposed transmission line:

"Costs will not be socialized and an approved Ontario Energy Board tariff sheet is not being sought. Costs will be recovered directly from Pattern in the form of contributed capital and operational cost recoveries under the terms of a 20-year commercial agreement to be mutually agreed upon between the two parties."

CKT's assessment of the regulatory approvals required was modified in its interrogatory responses. In particular, CKT's response to the Power Worker Union's interrogatory #2 provided:

"CKT agrees that the "operational cost recoveries" as referred to in the application are transmission charges pursuant to section 78(1) of the *Ontario Energy Board Act, 1998* ("*OEB Act*") and section 4.2.2 of the Board's *Transmission System Code*. As such, CKT will seek an order of the Board pursuant to section 78 of the *OEB Act* approving the charges to be recovered from the South Kent Wind Farm.

As explained in the Application (see pages 4 and 29), the project will be a line connection transmission facility the capacity of which will be limited by the capacity of the Hydro One transmission system at the point of connection to that system. The line connection will thus be sized to serve the requirements of a single customer. CKT's section 78 application will seek approval of the charges to that single customer, the South Kent Wind Farm, which charges will be set out in a 20 year transmission services agreement between CKT and the South Kent Wind Farm.

This approach is not unlike the alternative regulatory model recently sought by Union Gas in respect of its Dawn Gateway Pipeline project [EB-2009-0422], and approved by the Board."

Based on CKT's evidence, it is clear that it intends to only seek recovery of costs from SKW. We have also filed a letter from CKT in this regard as Attachment "B". While there is a letter of intent between CKT and SKW, the parties have not yet entered into a commercial agreement as referenced in the above quotation.

B. MACHACEK et al.**Interrogatory 1: Project Cost**

Preamble:

We acknowledge that environmental issues are not to be dealt with through the Ontario Board Hearing. We are in the process of forming a group of concerned farmers/ land owners to deal with the Environmental cleanup which will be required to reduce impact on surrounding farmland. We have been in direct contact with CN regarding this matter. The line of questioning here is directed at the financial impact on power costs if these concerns/ liabilities are not addressed prior to project approval.

In the application you state (pages 6 and 13) *'The Transmission Project and the cost of connecting to HONI's Chatham SS will be paid for by the Applicant. Therefore the cost the Transmission Project and the connection to the Chatham SS will have no impact on transmission rates in Ontario.'*

In our correspondence dated July 25, 2011 and as stated in the evidence publically filed with the Ontario Energy Board, Chatham-Kent Transmission Inc. ("CKT") (a corporation controlled by The Corporation of the Municipality of Chatham-Kent and part of the Chatham-Kent Energy (CKE) group of companies) may seek to purchase a 100% fee simple interest in lands comprising part of the CASO Subdivision upon the completion of the abandonment process.

According to the application for Electricity Transmission Licence by Chatham-Kent Transmission Inc. filed with the Board November 2010, *'subsequent to construction completion, Pattern will apply to the Ontario Energy Board for leave pursuant to Section 86 of the Ontario Energy Board Act to sell the transmission facility to Chatham-Kent Transmission ("the Applicant") at cost. Subject to Board approval, the Applicant would thereafter own and operate the transmission facilities.... Costs will be recovered directly from Pattern in the form of contributed capital and operational cost recoveries under the terms of a 20-year commercial agreement to be mutually agreed upon between the two parties.'*

Questions:

A. The indemnity coverage in the easement agreement does not hold SKW responsible to cover the losses of rent, business opportunities, crop production and profits that may result from the Grantors loss of use of property – if this liability is taken by CKT will that liability potentially affect power costs?

B. In our correspondence on July 25th, 2011 it is stated that it is your understanding that CKT will have contractual rights against CN to cause CN to remove all railway facilities from the SASO Subdivision – What is the basis for this understanding? Where could we see the terms of this agreement? Is this publically available information? What is the time line for this removal relative to construction of the transmission corridor?

C. If CKT takes on the liability of the land from CN and the land is not properly cleaned up, will the liability and costs for this remediation and the effects on surrounding farm land production be passed on to CKE and therefore be reflected in the downstream transmission rates in Ontario, or do you see these costs being passed on directly to municipal tax payers?

Responses:

A. It is not apparent from the question posed which “easement agreement” is being referred to, nor who the parties to that agreement would be. SKW has consulted with CKT, and neither SKW nor CKT understand the basis upon which liability for “*losses of rent, business opportunities, crop production and profits*” affecting the intervenors is being posited, and as against whom. It is therefore not possible for SKW to respond to this question, save to note that neither SKW nor CKT anticipate any such losses arising from construction of the proposed transmission facilities on rail corridors that have been in use for more than 100 years or municipal rights of way.

B. The basis for SKW’s understanding in this regard is that in typical agreements respecting the purchase and sale of land, a purchaser will have contractual rights against a vendor to require removal of elements upon the land which are inconsistent with such purchaser’s intended use of the land. SKW is not party to any private agreements between CKT and CN. Save for the easement agreement between CKT and CN which is publicly available and registered on title to the CASO Subdivision, SKW has not reviewed the provisions of any final and executed agreements in respect of the CASO Subdivision. The publically available easement agreement does not address the removal of the railway facilities, and to SKW’s knowledge no such removal would be required under an easement. SKW is not aware of any requirements that may apply to CN under the regulated abandonment of railway lands procedures. In any event, the removal of such railway facilities is not required for the construction of the proposed transmission facilities, and thus is not a matter for which SKW will have a responsibility or cost.

C. SKW does not know the conditions under which CKT would be willing to acquire fee interest in all or any portion of the rail land. SKW has consulted with CKT, and neither SKW nor CKT understand what “clean up” obligations or “effects on surrounding farm land production” the question is referring to. In any event, as the Board has noted in Procedural Order No. 1 herein, “environmental” or “land use” issues are beyond the scope of this proceeding.

Interrogatory 2: Promotion of renewable energy sources

Preamble:

The Ontario Ministry of Energy and Infrastructure has initiatives to promote and invest in biofuels as a renewable energy source. Corn and soybean crops, commonly farmed along the property in question, can be used for ethanol and biodiesel production respectively.

Questions:

- A. What is the total amount of acreage in the corridor?
- B. What percentage of that land will be used directly by the power lines and structures?
- C. Is SKW open to allowing the land not used by power structures to be returned to farmland allowing efficient production of biodiesel crop production?

Responses:

- A. SKW believes that the total acreage of the corridor is approximately 290 acres. We note that this is a rough estimate, and that SKW has engaged surveyors to determine the exact acreage.
- B. SKW believes that approximately 1/2 of the width of the corridor will be used for the proposed transmission facilities (ie. approximately 145 acres). Again, we note that this is a rough estimate.
- C. SKW desires real property rights only in respect of the portions of the lands occupied by power structures. SKW is open to any use of the remaining lands which does not or could not adversely affect the construction, operation, maintenance, repair and removal of and access to the power structures on the lands.