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VIA RESS, COURIER and EMAIL

Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
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Toronto ON M4P 1E4

Attention: Kirsten Walli, Board Secretary

Dear Madame:

Re: EB-2011-0063 – Clarification regarding scope of proceedings

Introduction and Summary

This letter is written on behalf of Grand Renewable Wind LP (the “Applicant”) to request the Board to provide parties with confirmation of the scope of these proceedings. The need for this confirmation is made clear in light of correspondence from Haldimand County Hydro Inc. (“HCHI”) and interrogatories filed by Board staff and the Independent Electricity System Operator (“IESO”). These materials each indicate a desire to incorporate issues into this leave to construct application (the “Application”) that are not within to the Board’s statutory mandate. Capitalized terms not defined herein have the meaning ascribed to them in the Application.

The Board’s Statutory Authority in this Application

This Application is commenced under s. 92 of the *OEB Act, 1998* (the “*OEB Act*”). Section 92 is somewhat unique in that the range of considerations that the Board may take into account has been prescribed. Subsection 96(1) provides that the Board “shall” grant leave to construct if it determines that the proposed work is in the public interest; Subsection 96(2) prescribes the Board’s mandate as follows:

“In an application under section 92, the Board shall only consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.

2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources.” (emphasis added).

The materials filed in this proceeding by HCHI, Board staff and the IESO effectively request the Board to go beyond this prescribed statutory mandate.

HCHI’s Request for Access

By letter dated August 18, 2011, HCHI stated that it “has a significant need for a new transformer station to serve Dunnville and the areas surrounding Dunnville. The proposed transmission line in this Application would provide an ideal connection of the new transformer station [...] HCHI and its ratepayers have an interest in ensuring the owner of the transmission line is a licenced transmitter and will permit the owner of the new transformer station ... to connect in the future.” It went on to advise that it “will provide evidence of the nature of its need for the transformer station” in this proceeding. Essentially, HCHI is requesting (the “HCHI Request”) that the Applicant become a licensed transmitter so that HCHI can access the Applicant’s privately-owned Facility.

From a purely technical standpoint, the Facility as designed cannot accommodate additional load. More fundamentally, HCHI’s allegation of need for its future expansions is not related in any manner to the scope of the Board’s review of this Application. Although HCHI may describe the HCHI Request as falling under the consideration of “price and reliability”, the Applicant’s Facility, which is essentially a gen-tie, will not affect the price and reliability and quality of service of electricity for consumers. This is due to the fact that, with the exception of the line tap, the cost of the Facility will be entirely borne by the Applicant.

HCHI’s claim here is that it will be seeking access to the Applicant’s Transmission Line and, presumably, other person’s land rights as well. The current Application is not the appropriate venue for that request. If HCHI seeks to demonstrate to the Board that it needs to connect a new transformer station, then it may bring a leave to construct application and demonstrate that need. In such an application, HCHI can provide notice to all potentially affected persons with an interest in land. Those persons may include the Applicant and the landowners in this Application, as well as other potentially affected persons. If so, then HCHI will have the opportunity to demonstrate that it requires access to property and the parties can test that evidence. It would be inappropriate, and outside of the Board’s authority, to address that claim for access in this Application.

Board Staff Interrogatories

In Interrogatory #10, Board staff asks a number of questions based on the premise that “the Applicant intends to apply for an exemption from obtaining a transmitter licence.” These questions deal with issues such as “ensur[ing] that the TSC provisions and obligations are binding”; addressing how “the Applicant would be disadvantaged if it were obligated to obtain a transmitter’s licence”; and how the Applicant would address “requests for additional connections”.

To be clear, the Applicant is not requesting the Board to grant it an exemption from transmission licence requirements. The exemption from licencing requirements arises by operation of law, not by Board permission. Specifically, Ontario Regulation 161/99 s. 4.0.2. (1) (d) (the

“Exemption Regulation”) provides that exemption from transmission licencing requirements applies where:

“the transmitter is a generator and transmits electricity only for a price, if any, that is no greater than that required to recover all reasonable costs if, ...

- (d) the transmitter is a generator and transmits electricity only for,
- (i) the purpose of conveying it into the IESO-controlled grid.”

On its face, the exemption applies to the Applicant on the evidence in this proceeding.¹ More to the point, where the exemption applies, the Board does not have the discretion to require an applicant to be licenced. If Board staff is of the view that licence exemptions described in the Exemption Regulation are regrettable, then it should seek to have the Government amend the Exemption Regulation. However, under the Exemption Regulation as currently drafted, the issues raised by Board staff are not in scope in this Application.

IESO Requests

The IESO also raises issues similar to those raised by the Board regarding third party access to the Facility under section 26 of the *Electricity Act, 1998*, as well as the application of the Exemption Clause. Like Board staff, the IESO has prefaced some interrogatories with the assumption that the Applicant is seeking an exemption requirement. As indicated, this is not the case. Also, and with the greatest respect, the Applicant is not clear as to the basis for these particular questions, given the mandate of the IESO in the energy sector as a system operator. To the Applicant’s knowledge, the IESO does not have the role of regulating prices or Board licensing issues, rather, the IESO’s role is to ensure that system reliability and operability can be maintained and to ensure that the requirements of the Market Rules are met. System reliability for the Facility was recently confirmed in the system impact assessment (“SIA”). The Applicant has approached the IESO regarding unbundling issues, which issue arises within the context of compliance with the Market Rules and are not affected by the licensing of the Applicant as a transmitter. The IESO’s entry into matters beyond its statutory mandate causes confusion and uncertainty respecting the roles and responsibilities of agencies as well as concerns respecting duplication and overlap of responsibilities.

The Applicant is in discussions with the IESO regarding issues that are within the IESO’s mandate, namely, ensuring compliance with the Market Rules², including conditions imposed via the SIA, which document and conditions confirmed reliability of the Facility. The Applicant

¹ Further, no party has provided evidence or argument that this exemption requirement is not being complied with. The Board’s clear practice in several proceedings has been that it will assume that legal requirements respecting licence obligations have been met unless it has specifically determined that these requirements are not met. For example, the Board stated that the determination of whether a smart metering company was acting outside of the scope of the Exemption Regulation requires “a case by case determination. That is clearly the intent of the statutory scheme.” (Decision and Reasons, in a Notice of Intention to Make an Order for Compliance against Toronto Hydro-Electric System Limited. (January 10, 2008) (EB-2009-0308).

Similarly, in granting an order renewing the Ontario Power Authority’s licence, the Board refused to consider arguments about whether its licence had been complied with: “there has not been a finding by the Board or any other enforcement agency that the OPA has breached its licence. I agree with the OPA to this extent: the licence application process is not the appropriate forum in which such a determination should be made.” Decision and Reasons in an application by the Ontario Power Authority for a licence, December 1, 2010 (EB-2010-0220), p. 9.

² The Applicant intends to obtain a generator license and as such, will meet the requirement that, in order to become a Market Participant, it will be licensed by the Board.

intends to meet or exceed all requirements under the Market Rules and those requirements set out by the IESO in the SIA.

Conclusion

As stated above, the Applicant's status as a licensed or unlicensed transmitter has no effect on the interests of consumers with respect to prices and the reliability and quality of electricity service, since the Applicant intends to absorb the costs of building, owning and operating the Facility. Should HCHI wish to build additional facilities or make additional connections, the impact of HCHI's proposed actions on prices and the reliability and the quality of electricity service will need to be addressed. HCHI's future proposed impacts are outside of the scope of the Applicant's leave to construct process.

In conclusion, HCHI, Board staff and the IESO appear to be requesting the Board to pursue issues in this Application that are clearly outside of its statutory mandate under s. 92 of the *OEB Act*. It would be helpful for all parties for the Board to confirm that these issues are out of scope.

All of which is respectfully submitted.

Yours very truly,

McCarthy Tétrault LLP

Per:

Kristyn Annis

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