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Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto ON M4P 1E4

**Attention: Ms Kirsten Walli
Board Secretary**

Dear Ms. Walli:

**Re: Haldimand County Hydro Inc.
Application for Leave to Construct Transmission Facilities
for Grand Renewable Wind LP
Board File: EB-2011-0063**

Introduction and Summary

This letter is written on behalf of Grand Renewable Wind ("GRW"), the Applicant in the above noted proceeding, in response to various materials filed by Haldimand County Hydro Inc. ("HCHI") and Hydro One Networks Inc. ("Hydro One"). The materials cover a lot of ground – most of which is not relevant to this application. The specific purpose of this letter is to request the Board to strike the evidence of HCHI that was filed on August 30, 2011 on the grounds that it is not relevant to this proceeding.

By way of background and context, in this application, GRW is seeking leave to construct a generation connection line. The proposed facility is a private line entirely paid for by GRW.

On August 18, 2011, HCHI filed a letter with the Board indicating that the connection line that is the subject of this application would "provide an ideal connection" for HCHI's proposed transformer. HCHI further indicated that it would like access to that connection line and that HCHI would be filing evidence on the need for a proposed transformer in this application.

GRW responded by letter dated August 24, 2011 noting that the Board does not have the statutory authority to grant access to GRW's proposed facilities, particularly not in a leave to construct application.

HCHI then filed a letter with the Board, dated August 25, 2011 proposing that the Board request the Minister of Energy to provide it with a directive that would expand its jurisdiction to address what HCHI describes as a "regulatory gap". The purpose of this directive would be to have the Minister authorize the Board to turn leave to construct applications into a system planning exercise that would "fix" the current "procurement and regulatory approval system." This

approach would, of course, dramatically change the OEB's statutory mandate with respect to leave to construct applications.¹

In furtherance of this proposed new mandate for the Board, on August 30, 2011, HCHI filed evidence whose purpose was, according to HCHI "to support the need, in a general form" for additional transformer station ("TS") capacity and to show that a new TS could meet that requirement. The purpose of this evidence is thus to support HCHI's claim for access to the GRW tie-line. HCHI is thus apparently asking the Board to exercise the broader mandate that HCHI would like it to exercise under a proposed new Directive. For the reasons identified in the applicant's letter of August 24, 2011, that request is inconsistent with the Board statutory mandate in ss. 96(2) of the *OEB Act, 1998*.

Hydro One has tried to come to HCHI's assistance by submitting a letter dated August 29, 2011 stating that the Board does have authority to order access to the property of GRW (and presumably other property owners). Hydro One's argument is that s. 96 of the *OEB Act, 1998* grants that authority because if HCHI is not entitled to use GRW's line, then that "will have an impact on the price of electricity service to consumers". This position cannot be seriously maintained. Section 96 of the *OEB Act, 1998* refers to the Board considering the interests of the consumers with respect to the "construction, expansion or reinforcement of the proposed work". In this case, the proposed work is the generation connection facility. That facility is entirely paid for by the applicant and has no impact on electricity consumers. The rate payers of HCHI are not affected one way or another by whether the facility is built or not.

The Board has long recognized the difference between expenditures by non-rate regulated companies and rate regulated transmission utilities. Thus, for example, in the *Board's Filing Requirements for Transmission and Distribution Applications*, the Board stated:²

"For rate regulated entities whose revenues are derived from ratepayers, there is an onus to justify before the Board all expenditures on transmission facilities.

Most of the projects proposed by non-rate regulated applicants are designed to connect sites or plants to the electric power system. The financial risk of constructing new transmission facilities lies with the owners and shareholders of the company. These companies do not need to justify their expenditures on transmission facilities."

Applying that here, the Board's mandate respecting prices for electricity consumers relates to costs that those consumers may incur as a result of the facility. When that facility has no impact on ratepayers at all, that concern does not arise.

It is clear that the Board does not have authority to allow a third party (HCHI) to have access to the property of GRW and/or other property owners in a leave to construct application. The Applicant therefore respectfully requests that the Board strike HCHI's proposed evidence.

¹ This letter will not address the merits of HCHI's suggested Directive. The audience for such a request is the Minister of Energy and not the Board. It is worth noting however, that it is extremely unlikely that the Minister has the statutory authority to issue the requested Directive. A Directive cannot change the Board's statutory objectives or mandate.

² Ontario Energy Board, *Filing Requirements for Transmission and Distribution Applications*, November 14, 2006, pp. 23-24.

Conclusion

For the foregoing reasons, it is respectfully requested that the Board to strike the evidence of HCHI that was filed on August 30, 2011 on the grounds that it is not relevant to this proceeding.

This is the second attempt *in this proceeding* by HCHI to seek to expand the Board's mandate respecting leave to construct applications. In a previous motion, dated April 29, 2011, HCHI requested an order that the Board commence a generic proceeding and to defer making a final decision in the current application pending the completion of that proceeding. By order dated May 30, 2011, the panel dismissed that motion without a hearing, noting that "This Board panel does not have the authority to grant the relief sought by HCHI."³

In light of HCHI's continued attempts to prevent this proceeding from moving forward, the Applicant respectfully requests the Board to set a schedule for orderly completion of this proceeding and make it clear to HCHI that continued attempts to delay or add new steps will not be tolerated.

All of which is Respectfully Submitted,



fv George Vegh

c: K. Annis - McCarthy Tétrault LLP
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³ Decision on Motion, EB-2011-0027; EB-2011-0063; EB-2011-0127, May 30, 2011.