



**EB-2011-0209**

**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 Trout Creek Wind Power Inc. pursuant to section 74(1)(b) of the *Ontario Energy Board Act, 1998* to amend Hydro One Networks Inc.'s Electricity Distribution Licence ED-2003-0043 to exempt Hydro One from sections 6.2.4.1(e)(i) and 6.2.18(a) of the Distribution System Code with respect to Trout Creek Wind Farm (Hydro One Connection No. 12,780).

**BEFORE:** Paul Sommerville  
Presiding Member

Cynthia Chaplin  
Vice-Chair

## **DECISION AND ORDER**

### **BACKGROUND**

On May 25, 2011, Trout Creek Wind Power Inc. ("Trout Creek" or the "Applicant") filed an application with the Ontario Energy Board (the "Board") under section 74(1)(b) of the *Ontario Energy Board Act, 1998* (the "Act") to amend the distribution licence of Hydro One Networks Inc. ("Hydro One") to exempt Hydro One from sections 6.2.4.1(e)(i) and 6.2.18(a) of the Distribution System Code (the "DSC") with respect to the Trout Creek Wind Farm (Hydro One Connection No. 12,780) (altogether, the "Project") and to substitute a special rule for the Project.

Trout Creek also requested that the Board render an interim decision and order by May 26, 2011 prohibiting Hydro One from taking any steps to remove the capacity allocated to the Project and setting a date by which Hydro One must execute the Connection Cost Agreement in relation to the Project with Trout Creek and an amount to be paid on that date.

On May 26, 2011, the Board issued an Interim Decision and Order (the "Interim Decision and Order") exempting Hydro One from the requirements of sections 6.2.4.1(e)(i) and 6.2.18(a) of the DSC in relation to the Project until the Board's final disposition of proceeding EB-2011-0209.

The Board also ordered that "upon execution of the Connection Cost Agreement, Hydro One will collect \$200,000 from Trout Creek. The execution of the Connection Cost Agreement will occur within thirty days from the date of this Interim Decision and Order."

On June 7, 2011, the Board issued a Notice of Application and Written Hearing and Procedural Order No. 1 (the "Notice") in which, among other things, provision was made for interrogatories and submissions on Trout Creek's application. Hydro One and the Ontario Power Authority (the "OPA") requested and were granted intervenor status in this proceeding.

Pursuant to the Notice, Board staff and Hydro One filed interrogatories and the Applicant filed responses to the interrogatories. The Applicant filed its argument-in-chief on August 2, 2011. Submissions were not received from any other parties to the proceeding.

## **THE APPLICATION AND TROUT CREEK'S POSITION**

Trout Creek requested that the Board amend Schedule 3 of Hydro One's distribution licence to exempt Hydro One from sections 6.2.4.1(e)(i) and 6.2.18(a) of the DSC. Trout Creek also requested that the Board implement a different rule for the Project ("Trout Creek's Proposed Rules"). Trout Creek's Proposed Rules are attached to this Decision and Order as Appendix A.

Section 6.2.4.1(e)(i) of the DSC states that a distributor's capacity allocation process must include a requirement that a generator have its capacity allocation removed if the generator does not sign a connection cost agreement with the distributor within 6

months of the date on which the generator received a capacity allocation. Section 6.2.18(a) of the DSC states that the connection cost agreement must include a requirement that the generator pay a connection cost deposit ("CCD") equal to 100% of the total estimated allocated cost of connection at the time the connection cost agreement is executed.

Trout Creek entered into a Feed-In Tariff contract with the OPA with respect to the Project (the "FIT Contract") on April 30, 2010, with a Milestone Date for Commercial Operation ("MDCO") of April 30, 2013. The MDCO was subsequently extended by the OPA to October 27, 2014. The Project is located on lands controlled by the Government of Ontario and subject to the Ministry of Natural Resources' site release process for windpower projects.

Based on the evidence, the CCD to be paid by the Applicant to Hydro One is \$3,402,574.64. According to the Applicant, that amount is more than 10% of the overall capital investment in the Project. Trout Creek stated that it relies on outside sources of financing for its projects and that the lenders require certain milestones to be achieved prior to advancing funds. The Applicant further stated that those milestones have not been achieved as the Applicant has not been able to complete necessary studies and permits for the Project due to significant delays relating to the Ministry of Natural Resources' site release procedure. The Applicant submitted that because of these delays, which are beyond the Applicant's control, Trout Creek cannot obtain funding at this time to make the full CCD payment as required by the provisions of the DSC.

Trout Creek further submitted that the timing required by the DSC results in the developer being required to make the CCD much earlier in the development cycle than other projects that do not have to follow the Ministry of Natural Resources' site release procedure and prior to lenders having sufficient comfort to advance funds for a project. The Applicant stated that the requirement to pay the full CCD more than 3 years prior to the revised MDCO and prior to completing necessary testing and permitting would be fatal to the Project.

It is the Applicant's position that Trout Creek's Proposed Rules:

- (a) ensure that Trout Creek pays its fair costs at a reasonable point in the development of the Project;

- (b) ensure that the Project will not unduly hold capacity allocations where the project is not progressing through to completion; and
- (c) ensure that Hydro One is not put at risk, either from a timing or a financial perspective.

Trout Creek submits that its proposed exemption is in the public interest and that the regulatory regime should not punish developers for events beyond their control.

## **BOARD FINDINGS**

After considering the evidence and the Applicant's submission, the Board is persuaded that granting the relief sought by the Applicant is in the public interest.

As the Board stated in its Decision in EB-2011-0067, the objective of the subject DSC provisions is "to eliminate projects that are not being pursued aggressively or reasonably by the proponents" and that "proponents who do not aggressively pursue commercialization of their projects should be removed from the process".

It is the Board's view that Trout Creek's proposed exemption does not compromise this objective. The evidence demonstrates that Trout Creek is reasonably pursuing the Project and that the delays in the development of the Project were largely beyond Trout Creek's control.

Trout Creek is not seeking relief from paying the CCD. It is seeking to align the payment obligations with the regulatory achievements and development of the Project. Trout Creek has shown a financial commitment to the Project. In accordance with the Board's Interim Decision and Order in this proceeding, Trout Creek has paid a deposit of \$200,000 to Hydro One. Trout Creek also stated that it provided \$200,000 to the OPA as an initial security pursuant to the terms of the FIT Contract.

The Applicant confirmed that it relies on outside sources to finance the Project and that it is unable to make the full CCD payment required by Hydro One because of its inability to obtain funding at the current stage of the project development. The evidence demonstrates that potential lenders require certain milestones to be achieved prior to advancing funds. The Board therefore finds it inappropriate to require Trout Creek to pay a CCD equal to 100% of the total estimated allocated cost of connection at this early stage of the Project.

Considering the circumstances of the Project, the Board finds Trout Creek's Proposed Rules to be reasonable. The Board notes that Hydro One has not raised any concerns or objections to Trout Creek's proposed exemption or to Trout Creek's Proposed Rules. In the Board's view, Trout Creek's Proposed Rules will not have adverse effects on ratepayers, Hydro One or Trout Creek. In fact, the Board notes that the closing paragraph in Trout Creek's Proposed Rules ensure that the interests of Hydro One and its rate payers are protected. The Board will add an additional provision to Trout Creek's Proposed Rules to ensure that Trout Creek does not retain its capacity allocation in the event it does not proceed to construction and give notice of such to Hydro One by September 30, 2013. The additional provision is reflected in item No. 4 of Trout Creek's Proposed Rules.

Trout Creek's application included a request to exempt Hydro One from the requirements of section 6.2.4.1(e)(i) of the DSC in relation to the Project. As indicated above, section 6.2.4.1(e)(i) of the DSC states that a distributor's capacity allocation process must include a requirement that a generator have its capacity allocation removed if the generator does not sign a connection cost agreement with the distributor within 6 months of the date on which the generator received a capacity allocation. The Board notes that in its Interim Decision and Order, the Board granted Hydro One an exemption from section 6.2.4.1(e)(i) of the DSC in relation to the Project. Instead of conformity with section 6.2.4.1(e)(i) of the DSC, the Board directed Hydro One to execute a Connection Cost Agreement in relation to the Project within thirty days from the date of the Interim Decision and Order. In its submission, the Applicant confirmed that it had entered into a Connection Cost Agreement with Hydro One in accordance with the Board's Interim Decision and Order. Considering that Hydro One has now entered into a Connection Cost Agreement in relation to the Project in accordance with the Board's Interim Decision and Order, the Board does not believe it is necessary to amend Hydro One's electricity distribution licence to reflect an exemption from section 6.2.4.1(e)(i) of the DSC in relation to the Project. However, Hydro One's distribution licence will be amended to exempt it from section 6.2.18(a) of the DSC and to include Trout Creek's Proposed Rules.

**IT IS THEREFORE ORDERED THAT:**

1. Hydro One is exempt from the requirements of section 6.2.18(a) of the Distribution System Code as these requirements apply to the Project. With

respect to the Project, Hydro One must comply with Trout Creek's Proposed Rules, as amended by the Board, attached to this Decision and Order as Appendix "A". Schedule 3 of Hydro One's distribution licence ED-2003-0043 is amended to reflect the exemption and the new requirements.

**DATED** at Toronto, September 12, 2011

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

## Appendix A

### DECISION AND ORDER

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For the Trout Creek Wind Farm (Hydro One Project #12,780), Hydro One shall be exempted from the current connection cost deposit stipulated in s. 6.2.18(a) of the Distribution System Code (the "DSC") and shall, instead, adhere to the following schedule:

1. \$20,000 per MW of capacity shall be paid by the proponent to Hydro One upon the execution of the Connection Cost Agreement.
2. An additional deposit in the amount of 30% of the total estimated cost, as estimated by Hydro One, less the amount received by Hydro One under paragraph 1 above, shall be paid by the proponent to Hydro One no later than 4 months after the proponent notifies Hydro One that it has completed the Renewable Energy Approval.
3. No later than 180 days after Hydro One receives payment of the amount referenced in paragraph 2 above, Hydro One shall provide to the proponent a construction schedule and a more accurate estimate of the project cost, if such estimate is requested and paid for by the proponent. The payment for the estimate shall be drawn from the deposit to the extent possible.
4. The balance of the total estimated cost, as estimated by Hydro One based upon the best available information, shall be paid by the proponent to Hydro One no later than 30 days after the proponent notifies Hydro One that it is proceeding to construction. If this notification is not given by September 30, 2013, then the proponent's capacity allocation shall be removed.
5. Hydro One and the proponent shall mutually agree upon an in-service date that is no later than 2 years after Hydro One receives the balance referenced in paragraph 4, above, subject to the following: in cases where a transmission upgrade or new transmission facilities are required, Hydro One and the proponent may agree to an in-service date that is later than two years after Hydro One receives the balance referenced in paragraph 4, above.
6. The Expansion Deposit, as stipulated by Section 3.2.20 of the DSC shall be paid to Hydro One at the same time as the payment in paragraph 4.

Notwithstanding the foregoing, if at any time the above-noted payments to Hydro One are insufficient to cover Hydro One's costs as estimated by Hydro One, the proponent shall pay, to Hydro One, additional funding sufficient to meet the shortfall identified by Hydro One, and Hydro One shall be relieved of its obligation to perform such further work until it receives the said additional funding.