

**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.

**FINAL SUBMISSION**

In accordance with Procedural Order No. 1, South Kent Wind LP ("SKW") has prepared the following final submission. Neither Board staff nor the Independent Electricity System Operator (the "IESO") filed written submissions in this proceeding, which we submit should be interpreted by the Board to mean that neither Board staff nor the IESO object to SKW's leave to construct application.

A joint submission was filed on September 5, 2011 by William & Mary Ann Machacek and William Alan & Anne English ("Machacek-English"). This submission serves as a reply to the Machacek-English submission and a summary of the key aspects of SKW's application.

One of the concerns raised by Machacek-English is that the proposed railway corridor "has become neglected and this is having a negative impact on the agricultural productivity of surrounding farmland." SKW cannot speak to the negative impact on agricultural productivity of the land adjacent to the corridor, as no evidence was filed in this regard. Nevertheless, SKW submits that this concern is an "environmental" concern that is beyond the scope of this proceeding. As stated in the Notice of Application issued by the Board in this proceeding:

"For a leave to construct application that is filed under section 92 of the *Act*, such as this application, section 96(2) of the *Act* provides that when determining if a proposed work is in the public interest, the Board's jurisdiction is *limited* to consideration of:

- the interests of consumers with respect to price and the reliability and quality of electricity service, and
- where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources.

Therefore, the Board has no power to review what might broadly be described as "environmental" issues."

Further, the Board has ruled on numerous occasions that "environmental issues" are beyond the scope of a leave to construct application:

"On a plain reading of the statute, the Board is of the view that its public interest mandate is clear and that such mandate, as restricted by subsection 96(2) of the Act, specifically precludes the Board from considering environmental issues associated with the construction, expansion or reinforcement of a transmission line.

This view was been expressed by the Board in previous proceedings. In EB-2004-0476, which was an application for leave to construct an electricity transmission reinforcement project in the Niagara Peninsula area, the Board stated:

The Board does not have jurisdiction over environmental matters in leave to construct applications and will not interfere with the results of, or duplicate, the environmental assessment process. (Decision, page 5)

In EB-2005-0315, a decision related to the Board's authority to direct certain utilities to undertake certain work to address the York Region electricity supply problem, the Board stated:

As is clear from the Board's legislative mandate, and as has been confirmed by the Board on a number of occasions, the Board does not have the legal authority to review environmental issues in considering the approval of electricity projects. The environmental issues are entirely within the authority of the Ministry of Environment under the *Environmental Assessment Act*. (Decision, page 13)

The Board is without the authority to review environmental issues for electricity transmission line projects or for electricity projects as a whole. It is therefore clear that the Board does not have the jurisdiction over environmental matters relating to the construction of new generation facilities. In fact proponents are not required to apply to the Board for any approvals associated with the construction of a generating station. Therefore, the Board has no inherent jurisdiction to review any aspect of the construction of the GEC, including a review of the environmental impacts, if any, associated with the construction of the GEC." (EB-2005-0478)

In accordance with the referenced decisions above, the board lacks the jurisdiction to address the environmental issues raised in the Machacek-English submission. Even if the Board did have such jurisdiction, SKW submits that the concern raised lies with the owner of the corridor land and not the lessee SKW.

According to the Machacek-English submission, the corridor land should be used for agricultural land, which would be consistent with the Ontario Government's mandate for maximizing renewable energy if the land were used for the production of biodiesel and ethanol producing crops. SKW submits that its proposed use of the corridor for a transmission line is in support of the Ontario Government's mandate for

maximizing renewable energy, since the proposed transmission line would connect a wind farm that will contribute a total of 270 MW of clean, renewable energy to the provincial electricity grid. Further, SKW respectfully submits that the use of the corridor land for transmission purposes is the decision of the corridor owner. The Board does not have the jurisdiction to rule on whether the corridor land should be used for agricultural purposes.

According to the Machacek-English submission, a hydro corridor will negatively affect the adjacent landowners' property values. SKW respectfully submits that this unsubstantiated concern is also outside the scope of this proceeding, as previously explained by the Board:

"It is clear, when section 96 is read, that the value of land or the potential devaluation of land of an abutting property owner does not fall within the scope of the Board's jurisdiction."  
(EB-2005-0230)

In summary, SKW submits that all of the concerns raised in the Machacek-English submission are "environmental" concerns that fall outside the scope of this proceeding. For that reason, SKW requests that the Board disregard those concerns.

#### **Summary of Key Aspects of SKW's Application:**

##### **i) Need for the Proposed Facilities and Public Interest:**

As set out at Exhibit B, Tab 2, Schedule 1 of the Application, in January of 2010, the Province of Ontario entered into a Green Energy Investment Agreement (the "Agreement") with Samsung C&T Corporation and Korea Electric Power Corporation (together the "Korean Consortium"). Under the terms of the Agreement, the Korean Consortium has agreed to develop 2,500 MW of wind and solar renewable generation projects in Ontario in five phases. The Agreement is structured such that Phase 1 provides for targeted generation capacity of 400 MW of Wind and 100 MW of solar with the targeted commercial operation date of March 31, 2013.

As part of the commitment under the Agreement to develop Phase 1, a 270-MW wind farm located within the Municipality of Chatham-Kent in southwestern Ontario (the "Wind Farm") is being developed. The Wind Farm will further the Ontario Government's policy objective to increase the amount of renewable energy generation being added to the province's energy supply mix. In particular, the Wind Farm will contribute a total of 270 MW of clean, renewable energy to the provincial electricity grid.

The proposed transmission project is needed to connect the Wind Farm to the IESO controlled grid. Because the Wind Farm is consistent with the Government of Ontario's policy to promote the use of

renewable energy sources, the Transmission Project is in the public interest in accordance with subsection 96(2) of the *Ontario Energy Board Act, 1998*:

**96(2)** 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]

ii. System Impact Assessment:

The IESO completed a System Impact Assessment Report ("SIA") for the Wind Farm and Transmission Project dated May 5, 2011. The Applicant has received a *Notification of Conditional Approval of Connection Proposal* from the IESO dated May 4, 2011. The IESO's conclusions in the SIA include:

- (1) the proposed wind farm does not have a material adverse impact on the reliability of the IESO-controlled grid; and
- (2) the proposed project does not cause new violations of existing circuit breaker interrupting capabilities on the IESO-controlled grid.

The Applicant will comply with the requirements set out in the SIA, and will consider the IESO's recommendations upon completion of design and modeling of the Wind Farm and Transmission Project. As stated above, the IESO raised no objections to the Application.

iii. Customer Impact Assessment:

Hydro One Networks Inc. ("Hydro One") completed a final Customer Impact Assessment Report ("CIA") for the Wind Farm and Transmission Project dated May 6, 2011. Hydro One's conclusions in the SIA include:

- "Load flow studies confirmed a strong 230 kV system between Chatham SS, Keith TS and Lauzon TS with no material change in the voltage performance indicating that the proposed generation does not provide post-contingency voltage support."
- "Short-circuit studies were carried out to determine new projected fault levels at customer transmission connection points. They showed minimal impact on present short-circuit levels for the majority of Chatham-Kent-Essex area customers."

The Applicant will comply with the requirements contained in the CIA subject to ongoing negotiations with Hydro One.

iv. Cost of the Proposed Facilities:

The proposed transmission facilities 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. Discussions between the Applicant and HONI are ongoing regarding cost responsibility for any remote upgrades required by HONI to its transmission system.

Further, as set out in the letter from Chatham-Kent Transmission ("CKT") at Attachment "A" to the interrogatory responses, CKT intends to apply to the Board for a rate order that will allow it to recover ongoing costs associated with the proposed transmission facilities directly from SKW, and that such costs will not form part of the provincial transmission cost pool.

v. Land Matters:

The forms of land use agreements have been filed by the Applicant. As of the date of this submission, easements have been obtained from all but one landowners along the tie line. It is expected that an easement will be obtained from the one remaining landowner within the next week.

As stated in response to Board staff interrogatory #1(a), 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 CKT and SKW. SKW has no reason to believe that the execution of the necessary agreements will be delayed or not executed at all.

For all of the reasons contained herein, we respectfully request that the Board grant leave to construct the proposed facilities pursuant to section 92 of the *Ontario Energy Board Act, 1998*.

All of which is respectfully submitted.

September 15, 2011



South Kent Wind LP

By its Counsel: Andrew Taylor