

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sch. B, as amended* (the “**OEB Act**”);

AND IN THE MATTER of an application by Grand Renewable Wind LP (the “Applicant”) for an order under section 92 and subsection 96(2) of the OEB Act granting leave to construct an electricity transmission line and related facilities.

APPLICANT’S ARGUMENT IN CHIEF

INTRODUCTION

1. Grand Renewable Wind LP (the “Applicant”) has applied to the Board for leave to construct (the “Application”) an electricity transmission facility (the “Facility”) that is comprised of (i) approximately 19 km of 230 kV transmission line (the “Transmission Line”), of which 95% (~ 18 km) will be built along the municipal right of way known as Regional Road 20 (the “Haldimand ROW”), which is owned by Haldimand County; (ii) a collector substation (the “Collector Substation”); (iii) transition stations (the “Transition Stations”) used to transfer the Transmission Line from an overhead configuration to an underground configuration at Nelles Corners; and (iv) an interconnect station (the “Interconnection Station”).¹ The Applicant will own and pay for all aspects of the Facility, including the Interconnection Station.
2. The proposed Facility will be used to connect the Grand Renewable Energy Park (the “GREP”) which is to be located in Haldimand County, Ontario, north of the Lake Erie shoreline and west of the Grand River. The GREP will consist of (i) a 148.6 MW wind power generating facility (the “Wind Project”, owned by the Applicant), and (ii) a 100 MW solar photovoltaic generating facility (the “Solar Project”), to be owned by Grand Renewable Solar LP.
3. The proposed Facility will be used to transmit the electricity generated from both the Wind Project and the Solar Project to the IESO-controlled grid, however any electricity generated by the Solar Project will be transmitted for a price that is no greater than that required to recover all reasonable costs. In transmitting the electricity generated from the Solar Project, the Applicant relies on section 4.0.2(1)(d) of Ontario Regulation 161/99, Definitions and Exemptions made pursuant to the OEB Act, to be exempt from the requirement to obtain a transmitter licence under section 57(b) of the OEB Act. Exemptions under this regulation apply as a matter of law, and not at the Board’s discretion.
4. The Applicant intends to submit a notice of proposal to own transmission facilities pursuant to section 81 of the OEB Act when it applies for a generating licence from the Board.

Proceedings to date

5. To date, no parties have opposed this Application. Furthermore, with one exception, none of the directly affected Landowners are intervenors in the current process. Importantly, Haldimand County, the owner of the municipal ROW in which 95% of the

¹ Application, Exh. A-2-1, at p. .

Transmission Line will be built, although an intervenor, did not submit any interrogatories in this process. The Applicant and Haldimand County are in the process of negotiating a Community Vibrancy Fund Agreement, which would cover a number of key issues, including a road use agreement, community benefits, and principles of cooperation between the County and the Applicant.²

6. Haldimand County Hydro Inc. ("HCHI"), although not opposing the Application outright, has made several submissions that are out of scope, not only in this proceeding, but also in Summerhaven Wind LP's leave to construct proceeding, EB-2011-0027. Taken together, HCHI's course of conduct described below appears to have the purpose of delaying any decision by the Board in this matter.
7. On April 29, 2011 HCHI filed with the Board a Notice of Motion (the "Motion") requesting that the Board defer any final decision EB-2011-0063 until the Board has conducted a generic proceeding to decide issues of general applicability to the development of transmission lines. The Motion was also filed in the Summerhaven proceeding, EB-2011-0027. The Board dismissed the Motion based on the fact that the issues raised by HCHI did not fall within the scope of either of the Applications and also cited lack of jurisdiction.³
8. Although aware of the Applicant's plans to build the Facility as early as July 2010 (when the first public meeting was held), HCHI raised for the first time in its interrogatories on July 25, 2011 that it intended to upgrade its distribution to two 26.7 kV three phase circuits along entire length of the Haldimand ROW and iterated that the Applicant should be required to build to the potential needs of HCHI.⁴ The Applicant is willing to make commercially reasonable efforts to accommodate HCHI, and to that effect has used a pole that will meet all separation standards for 26.7 kV infrastructure in its design.⁵ However, apart from a casual reference by HCHI regarding upgrades in their interrogatories, the Applicant has not received any concrete plans by HCHI to upgrade its system along the Haldimand ROW. In fact, HCHI's Distribution Asset Management Plan anticipates declining or flat load growth.⁶
9. Without regard to the Board approved process for this application, by letter dated August 18, 2011, HCHI advised the Board that it intended to file evidence relating to the need for a new transformer station in Haldimand County. In HCHI's opinion, the proposed Transmission Line would provide an ideal connection of the new transformer station and

² Board Staff IRRs, filed by the Applicant August 15, 2011, IRR#4(i).

³ EB-2011-0027, EB-2011-0063, EB-2011-0127, Decision and Order on Motion, dated May 30, 2011 at p. 5-7.

⁴ HCHI Interrogatories ("IR"), IR#4(cc).

⁵ HCHI IRRs, Schedule 'A', Typical Pole Cross Section.

⁶ Supra, note 4.

it would be convenient for HCHI if the owner of the Transmission Line is a licensed transmitter in order to ensure that HCHI has access to the Transmission Line under legislation.

10. The substantive issues raised by HCHI's evidence are dealt with by the Applicant in its response to questions posed by the Board in Procedural Order No. 3 below. In addition to the basis for HCHI's access request, the Applicant takes issue with the timing of HCHI's submission. HCHI acknowledged that it was the first time it had raised the new transformer station with any party.⁷ Furthermore, the Applicant stated in its original application, filed April 13, 2011, that it was exempted from the requirement to have a transmitter licence.
11. Again without regard to Board approved process, on August 25, 2011, HCHI asked the Board to consider whether it could or should request the Minister of Energy to issue a directive as permitted by the section 28.6 of the OEB Act to empower the various agencies to develop a better solution for the connection of the Port Dover Wind Facility, the Summerhaven Wind Facility and the Project.
12. Although willing to continue to work with HCHI, the Applicant does not believe that any of the issues raised by HCHI on April 29, 2011 (the Motion), August 18, 2011 (the new transformer station), or August 25, 2011 (directive) fall within the scope of a leave to construct hearing. The scope of any application under section 92 is outlined in legislation, as detailed below.

Legislative context

13. Section 96(2) of the OEB Act provides that for an application under section 92 of the Act, when determining if a proposed work is in the public interest, the Board shall only consider the interests of consumers with respect to prices and 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.
14. The Board notes in Procedural Order No. 3 that "the current proceeding represents one of the first times since the enactment of the *Green Energy and Green Economy Act* that the Board has considered a leave to construct application from a renewable generation facility. Perhaps not surprisingly, there appears to be some level of disagreement amongst the parties regarding exactly what is within the scope of the proceeding."⁸

⁷ HCHI Letter of Comment dated August 18, 2011.

⁸ EB-2011-0063, Procedural Order No. 3, dated September 8, 2011.

15. Respectfully, the Applicant disagrees with the latter part of this statement. Although this will be one of the first times that the Board has considered a leave to construct application under the *Green Energy and Green Economy Act* (“GEGEA”), the Board has on numerous occasions approved privately-owned gen-ties for renewable generation facilities.⁹ Apart from widening the Board’s mandate in a leave to construct application to render its decisions in a manner that is consistent with the promotion of the use of renewable energy sources under section 96(2) of the OEB Act, the GEGEA did not alter the leave to construct process. Arguably, this was a conscious decision by the legislature, since it clearly examined the OEB Act and made various amendments via the GEGEA. In previous leave to construct applications, section 96(2) has been relied on by the Board to address the issue of need when considering whether to approve a transmission facility connecting a renewable generation facility.
16. In approving the construction of a transmission line that will connect a renewable generation facility, the Board is playing one part of a much larger process of planning for renewable energy generation by independent planning bodies such as the Ontario Power Authority and the Independent Electricity System Operator (“IESO”), as well as the Ministry of Energy. The issues that are before the Board in the current application are no different from the issues facing the Board in previous leave to construct hearings. Intervenor should not be permitted to expand the scope of the Board’s mandate, which is clearly confined by legislation, merely because the proponent has entered into a power purchase agreement with the Ontario Power Authority within the context of a feed-in-tariff program.
17. In previous leave to construct proceedings before the Board for renewable generators, the Board has limited its scope to the following issues:¹⁰
 - (i) Is the proposed project needed and is its routing the best alternative?
 - (ii) Is there a System Impact Assessment and what are its conclusions?
 - (iii) Is there a Customer Impact Assessment and what are its conclusions?
 - (iv) Will there be an impact on transmission rates?
 - (v) Have the land-use matters been addressed?
 - (vi) If the project is approved, what should be the conditions of approval?

⁹ See for example EB-2009-0315 (Greenwich Wind Farm), EB-2007-0006 (Kruger Energy Port Alma), EB-2009-0239 (Talbot Wind Farm) to name a few.

¹⁰ *Ibid.*

18. In addition to the issues outlined by the Board's established leave to construct process, the Board has on this occasion, posed four additional questions that were raised primarily by HCHI. The Applicant will address the established leave to construct issues first, followed by the Board's questions posed in Procedural Order No. 3.

CONSIDERATIONS UNDER SECTION 96(2)

Project Need

19. One of the Board's objectives is to facilitate the timely expansion of transmission and distribution systems to accommodate the connection of renewable energy generation facilities.¹¹ The proposed Facility is necessary to deliver power generated by the Wind Project and the Solar Project to the IESO-controlled grid. The Applicant has also executed two power purchase agreements with the Ontario Power Authority for the power delivered from the Wind Project and the Solar Project, respectively, to the IESO-controlled grid. The Facility is therefore consistent with government policy in respect of the promotion of renewable energy sources.

Project Routing

20. The Applicant has chosen the route with the least impact to the environment and landowners and that will meet all regulatory standards.
21. The Applicant examined six different routing options. The proposed routes were evaluated by Ontario Energy Board staff, the IESO, the OPA, Hydro One Networks Inc. ("Hydro One"), representatives from the Ministry of Energy and the Applicant. Three of the proposed routes were eliminated based on feedback from the review team. The remaining three routes were presented to the public and a feasibility study was carried out.¹² Only the chosen route (i.e. along Haldimand ROW) met CSA clearance standards, with the exception of one section of the Transmission Line, which section the Applicant has proposed to bury.¹³
22. In the event that any of HCHI's distribution infrastructure needs to be relocated, the Applicant will be responsible for any costs incurred related to such re-location.¹⁴ As per the studies carried out in EB-2011-0027, it is evident that the issues raised by HCHI

¹¹ Section 96(2) of the OEB Act, s. 96(2); See also EB-2009-0315, Decision and Order dated November 20, 2009 at p. 5.

¹² HCHI IRR#2(h).

¹³ *Ibid.*

¹⁴ HCHI IRR#4(a)(iv).

in that proceeding regarding induced voltage or grounding can be mitigated and addressed in the design of the proposed Facility.¹⁵ Furthermore, as currently designed, the majority of the Transmission Line will be on opposite sides of the road from HCHI distribution infrastructure, so it is not anticipated that any such problems that can not be mitigated will arise.¹⁶ However, in order to prevent any problems, the Applicant has recommends carrying out a pre-construction study, to establish a baseline operation state.¹⁷ The Applicant has also confirmed that it would be responsible for any reasonable mitigation measures associated with stray voltage.¹⁸

23. In building along an existing right of way, the Applicant is following the example of numerous transmitters and making use of land that has already been disturbed and presents the least impact to landowners (both with respect to construction, as well as operations and maintenance) and the environment. Furthermore, based on its discussions with Haldimand County¹⁹, who is the owner of the Haldimand ROW, as well as the evidence in these proceedings, the Applicant does not believe that Haldimand County has any issue with the Applicant's use of the Haldimand ROW. As three sophisticated parties, the Applicant expects that any issues that may arise between HCHI, Haldimand County and the Applicant regarding the use of Haldimand County's ROW can be easily addressed.

System Impact Assessment and Customer Impact Assessment

24. The final System Impact Assessment ("SIA") and Customer Impact Assessment ("CIA") were filed with the Board as part of these proceedings. The SIA examined the impact of injecting 254 MW of wind and solar power generation to the provincial grid, via the 230 kV circuit N5M, on the reliability of the IESO-controlled grid.²⁰
25. The SIA concludes that the proposed project (GREP and Facility) does not have a material adverse impact on the reliability of the IESO-controlled grid, nor does it cause new violations of existing circuit breaker interrupting capabilities on the IESO-controlled grid.²¹ The SIA noted that the 230 kV over-head line, underground cable and 230 kV breakers do not have required maximum continuous voltage rating of at least 250 kV.

¹⁵ EB-2011-0027, See Schedule C and Schedule D of the Applicant's Final Argument, dated July 27, 2011.

¹⁶ HCHI IRR#4(b).

¹⁷ HCHI IRR#4(c).

¹⁸ *Ibid.*

¹⁹ As stated above, the Applicant is finalizing negotiations regarding the Community Vibrancy Fund Agreement with Haldimand County, which will include a form of Road Use Agreement.

²⁰ System Impact Assessment Report, CAA-2010-399, at p. 6.

²¹ *Ibid.*

The SIA further notes however, which the Applicant confirms for the Board, that the Applicant's final equipment selections will be made to ensure compliance to the maximum 250 kV voltage level for the main breaker and 230 kV underground cable.

26. The SIA outlines the requirements for connection and makes two recommendations, which together form the conditions under which the IESO would issue its final approval to connect. The Applicant confirms that it will meet such conditions.
27. A representative of the IESO has raised the issue of "unbundling" the SIA given that the Solar Project and Wind Project will be owned by different entities. The Applicant is in discussions with the IESO regarding such administrative issues. However, the Applicant notes that the SIA already contemplates different entities in the report, including a requirement that "each Generator must satisfy the Generator Facility requirements in Appendix 4.2 of Market Rules" as a pre-condition to connecting.²² Furthermore, with the exception of the Solar Collector Station (which is considered part of the Solar Project), the Applicant will be the owner and operator of the Facility. Furthermore, the Applicant will, via an agreement with its affiliate, Grand Renewable Solar LP, oversee the operation of the Solar Collector Station.²³ The Board may also take it under advisement that the unique metering configuration for the Project has been developed in conjunction with the IESO, and therefore meets the IESO's approval. The fact that the Solar Project will be owned by an affiliate of the Applicant does not change the findings of the SIA, which are technical in nature.
28. The CIA reviewed the impact of the GREP Project on the existing transmission customers in the vicinity of the proposed connection. The CIA results "show that this project does not adversely affect existing customers in the area. The short circuit results show that the GREP Project is required to make a contribution towards the cost of short circuit mitigation measures required at Caledonia TS because it elevates fault levels within the 5% margin."²⁴ The Applicant confirms that it will make any contribution towards the cost of short circuit mitigation measures at the Caledonia TS, as per the requirements of Hydro One.

²² SIA, p. 12, Generator Requirements.

²³ Applicant's Interrogatory Responses to IESO ("**IESO IRRs**"), dated August 12, 2011, IRR#1(d).

²⁴ Customer Impact Assessment, GRAND RENEWABLE ENERGY PARK 254 MW WIND AND SOLAR GENERATION FACILITY GENERATION CONNECTION, FINAL, dated May 6, 2011.

Land Rights and Form of Easement Agreement

29. The proposed Facility will be developed across three distinct types of land, being three parcels of privately owned land, the MOI Lands and the Haldimand ROW, each as further defined in the Application. The Haldimand ROW is owned by Haldimand County.
30. The Applicant is in the process of finalizing a Community Vibrancy Fund Agreement with Haldimand County. The Community Vibrancy Fund Agreement contemplates the parties concurrently executing a road use agreement for the Applicant's use of the Haldimand ROW. Although HCHI has raised access issues regarding the Applicant's proposed use of the Haldimand ROW, the Applicant notes that any access issues may be negotiated with the owner of the Haldimand ROW, being Haldimand County, as they would be with any third party seeking access to the Haldimand ROW. Furthermore, the Applicant has confirmed that it is not seeking exclusive use of the Haldimand ROW.²⁵
31. Regarding the privately held lands, each of the Landowners²⁶ was provided with the appropriate Notice of Application and the Facility.²⁷ None of the affected Landowners filed for intervenor status in this Application. Landowner B has executed the Ground Lease, a form of which was filed with the Board in these proceedings. The Applicant continues to negotiate with Landowner C and Landowner D, but expects to finalize the Ground Lease with the respective Landowners shortly.
32. With respect to the ORC Lands, the terms of the ORC Option Agreements are currently being negotiated between the ORC and the Applicant's parent company, SRE. All commercial terms have been agreed to with the exception of a few real estate specific clauses, which are being negotiated in order to satisfy legal requirements for leasing land from the government.²⁸

²⁵ HCHI IRR #3(m).

²⁶ The Applicant notes in Board Staff IRR that Landowner A, who is an intervenor in this proceeding, was replaced with Landowner D, who has not intervened. It follows that none of the Landowners are intervenors in the proceeding.

²⁷ See the Applicant's affidavits of service and publication filed with the Board on April 28, 2011.

²⁸ Board Staff IRR#6(i).

Environmental Assessments

- 1.1 The Applicant has completed the draft REA documents (the “Draft Documents”)²⁹ and has posted the Draft Documents for public review. The Applicant is within the public comment period prior to the second and final public open house. The Applicant has scheduled the second public open house for September 22, 2011. The next step under the REA process is to complete the public consultation report. The public consultation report is the last document needed prior to submitting the REA package and application form along with security to the Ministry of Environment. The Ministry of Environment will then review the package for completeness and, if deemed complete, will begin their technical review of the materials.
33. The REA includes an assessment of the Facility. Although mentioned throughout the Draft Documents, the Natural Heritage Report, the Construction Report and the Design and Operations Report (which form part of the Draft Documents) provide an assessment of the Facility.³⁰
34. The Applicant will adhere to all recommendations established in the Draft Documents and by the Ministry of Environment.

Public Consultations

35. The Applicant has consulted with the local community and other stakeholders directly and in the course of conducting the REA. Evidence documenting contacts and meetings with officials and community organizations, public open houses and information sessions forms part of the Draft Documents. The Applicant held its first public meeting July 2010. The Applicant is scheduled to hold its second and final public meeting on September 22, 2011.
36. As part of the overall aboriginal engagement process the Applicant identified aboriginal communities that may have an interest in the Project. The Applicant, via its consultant Stantec, has engaged with such communities since the onset of the early stages of Project development. Consultation has included telephone conversations, meetings and

²⁹ The Draft Documents include the Natural Heritage Assessment and Environmental Impact Study – Main Report; the Project Description Report; the Project Summary Report; the Design and Operations Report; the Archaeological, Protected Property and Heritage Reports; the Wind Turbine Specification Report; and the Water Report.

³⁰ As indicated in a letter to the Board dated

presentations.³¹ The Consultation Report, which will be submitted pursuant to the REA after the second and final public meeting is held on September 22, 2011, will include an in-depth analysis and summary of Aboriginal consultation and how the Applicant met all prescribed consultation requirements under the REA Regulation.

37. In particular, the Applicant has engaged with Six Nations regarding the GREP Project and the Facility over an extended period of time. The Applicant's efforts to engage with Six Nations are outlined in a letter to Mr. Lonny Bomberry, Director of Land and Resources for Six Nations, dated July 12, 2011 and filed with Board in this proceeding. The Applicant respectfully submits that it has met the consultation requirements established under the REA process.

Impact on Ratepayers

38. The Facility, including the Interconnection Station, will be entirely paid for by the Applicant. As such, the Facility will not impact transmission rates in Ontario.

PROCEDURAL ORDER NO. 3 - LICENSING AND ACCESS ISSUES

39. In Procedural Order No. 3, the Board directed all parties to provide submissions on the following questions:
- (i) What are the responsibilities, if any, of the Applicant to provide access to its proposed Transmission Facilities?
 - (ii) Are broader transmission planning issues (i.e. beyond the Transmission Facilities proposed in the Application) relevant considerations in this proceeding? What responsibilities does the Applicant have, if any, with respect to broader transmission planning issues?
 - (iii) Does the fact that the proposed facilities will be located largely within a municipal right of way have any bearing on the Applicant's obligation regarding future requests for connection?
 - (iv) Does section 96(2) permit the Board to consider the impact of the proposed Transmission Facilities on the reliability of the current or future distribution system owned and operated by HCHI?
40. The responses to each of these questions are set out below.

³¹ LTC Application, at par. 100.

Question 1 – Responsibility to Provide Access

41. The Applicant is building a generation connection line at its own expense to connect generation facilities to the IESO-controlled grid. When constructed, the Transmission Line – like all other connection lines in the province – will be private property. Like all property, its use is always subject to negotiations between its owner and third parties (such as HCHI). These negotiations may lead to a mutually acceptable agreement. However, in the absence of such an agreement, the Board's power to order the Applicant to provide access to HCHI would have to be explicitly provided in legislation.
42. There are two potential legal bases for the Board's authority to grant access to facilities. Neither of them is applicable here.
43. The first potential legal basis for the Board to order access to transmission is in s. 26 (1) of the *Electricity Act*, which provides that a transmitter shall provide "generators, retailers and consumers with non-discriminatory access to its transmission ...systems in accordance with its licence."
44. However, that provision is not relevant here because the Applicant is exempted from requiring a transmission licence in accordance with Ontario regulation 161/99. One consequence of this exemption is that the Applicant is also expressly exempted from s. 26(1).³²
45. The second potential legal basis for the Board to grant third party access is if it grants an application for an order expropriating land in accordance with s. 99 of the OEB Act. HCHI has not applied for an expropriation order here. Instead, it has purported to provide evidence on "the need, in a general form" for additional transformation station capacity. This assertion of need is irrelevant in a leave to construct application and inadequate in an expropriation application.
46. The Board has recently set out a detailed discussion of the issues to be addressed in an expropriation application brought by a utility (such as HCHI). These are set out below:
 - "(1) To the extent that the public interest has not already been considered in [a leave to construct application]...are the proposed expropriations in the public interest?
 - (2) What specific interests in lands for which the authorization to expropriate is requested, are appropriate in the circumstances?

³² see Ontario Regulation 160/99, ss. 2.2.1.

(3) Has [the applicant utility]... taken appropriate and reasonable steps to minimize the impact of the proposed expropriations on the subject properties?

(4) Has [the applicant utility]... taken appropriate steps to minimize the disruption to landowners by requesting easements that are no larger and no more extensive than necessary?

(5) Does [the applicant utility's]... plan, if any, for the abandonment of the Project facilities include appropriate and reasonable measures taken to minimize any impact on the specific properties proposed for expropriation?

(6) If approval to expropriate lands is granted, what conditions, if any, should be attached to the Board's Order?"

47. As a result, if HCHI eventually does request the Board to order access to the Applicant's property, it has the opportunity of making its case by demonstrating that it can satisfy the criteria specified above. However, HCHI has not brought an order requesting expropriation and should not be in a position to short circuit the process by blithely asserting that it has a need to build a transformer station and that it would like to have access to the Applicant's property to make its connection to that station more convenient.

Question 2 – Applicant's Responsibility for Broader Transmission Planning Issues

48. The Applicant is building a connection line to connect its generation facilities. The Board has recognized that generators have done this under the Board's rules for several years. Thus, in its Notice of Proposal to Amend the Transmission System Code to address cost responsibility for renewable generators, the Board noted that "significant generator connection activity has occurred under the existing policy framework, including the connection of renewable generation facilities. Moreover, existing connections policies have been successful at connecting renewable generation even when located some distance from the grid."³³
49. The Applicant is not aware of any case where a leave to construct application for a connection line has been transformed into a broader transmission planning initiative.
50. There are very good reasons for this. Transmission planning is carried out on an integrated basis which looks at broad system needs. It is led by the Ontario Power Authority, an independent planning agency which has a neutral perspective of transmission and generation opportunities and is capable of giving expert advice to the Board that is informed by its view of the public interest in system planning. As the Board

³³ Notice of Proposed Amendments to Transmission System Code (EB-2008-0003), at p. 9.

noted, "The Board agrees that the starting point for transmission project development planning should be an informed, effective plan from the province's transmission planner, the OPA."³⁴ This role could be carried out through an IPSP or other Board proceeding specifically designed for that process. Any such proceeding will attract a range of participants and perspectives.

51. By contrast, the statutory mandate for leave to construct applications are restricted to "the interests of consumers with respect to prices 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 and the use of renewable energy sources." As a result, the scope of issues and the nature of the parties that participate in a leave to construct application are restricted to the facilities in question, not broader planning considerations. It is therefore an inappropriate context in which to investigate a partial and one-sided view of transmission system needs.
52. This application demonstrates why this is the case.
53. HCHI (and Hydro One for that matter) is not a system planner. It is a distribution company with its own particular motivations and incentives. Its assertions of what transmission planning outcome is in the public interest are not made as part of an integrated review of the options available to optimize the transmission system. Like all utilities, it represents a private company that, the Board recognizes, seeks to expand its rate base.³⁵ The leave to construct process for a generator connection line is simply not the forum to conduct system planning generally or evaluate utility specific expansion proposals in particular.
54. Hydro One has also noted that the Board has indicated that it will be developing a regional planning process at some point in the future. Hydro One has stated that "the issues under consideration in the current proceeding are precisely those that are meant to be covered by that initiative." It is not clear what Hydro One considers to be the relevance on the regional planning process to the issues in this case. In the Applicant's view, there is no relevance.
55. The regional planning consultation is still at a very early stage.³⁶ The terms of reference of that process do not include consideration of generation connection lines. Further,

³⁴ Board Policy Framework for Transmission Project Development Plans, August 26, 2010 (EB-2010-0059)..

³⁵ For example, in the Board Staff Discussion Paper accompanying the, it was noted "the tendency identified in economic theory for regulated utilities to over accumulate capital as a means of raising the volume of profit. See Averch, Harvey, Leland L. Johnson, Behaviour of the Firm Under Regulatory Constraint, American Economic Review, December 1962, vol 52 issue 5, page 1952: See Staff Discussion Paper: Generation Connections, Transmission Connection Cost Responsibility Review , July 8, 2008, p. 7.

³⁶ See EB-2011-0043. The OEB has only just issued recent meeting minutes of the first meeting on June 3, 2011.

there is no indication when this consultation will be completed or what, if any, recommendations may result from it. Any recommendations from the consultation process would also require implementation through Board rules, guidelines or adjudicative decisions. It could therefore be years before a regional planning approach is adopted and the result of this process may or may not be relevant to future leave to construct applications.

56. It should be noted that it has never been the Board's practice to put leave to construct applications or any other infrastructure projects on hold while broader planning processes works themselves out. It is not at all uncommon for facilities' applications to move forward while policy initiatives are also being developed. Thus, for example, in reviewing an application for leave to construct a transmission line for a gas generation facility, the Board noted that the incumbent utility, Union Gas, expected to propose a tariff for these facilities as part of the Board's policy review – the Natural Gas Electricity Interface Review ("NGEIR").³⁷ The Board rejected Union's request that the Board take potential outcomes of NGEIR into account in the leave to construct application, noting, "It is not in the public interest in this case however to require GEC to await the resolution of an appropriate tariff in the NGEIR proceeding."
57. This case is an even stronger one for not deferring a decision. The Board's regional planning discussions are at a very early stage and its subject matters and outcomes are entirely speculative. There is no reasonable basis for awaiting the outcome of that process.

Question 3 – The Relevance of Rights of Way

58. The Applicant's uses of rights of way are not relevant to the Board's authority to order access by a third party. The Applicant's legal entitlements to municipal rights of way are granted by legislation (*Electricity Act*, s. 41) and, in this case, are being negotiated with the owner of the Haldimand ROW, Haldimand County. There is nothing in the statutory scheme that suggests in any way that the Board has the authority to impair those legal rights in a leave to construct application.

Question 4 – Impact on Current and Future Distribution Reliability

59. This issue apparently arises out of the allegations of HCHI of its requirement for a new transformer station. As the Applicant understands it, that alleged need is not impacted one way or another by the proposed Facility. As a result, the allegation of need – and HCHI's assertions respecting future service requirements in support of that need – are irrelevant to the Board's consideration in this proceeding.

³⁷ Decision with Reasons in Application by Green Field Energy for Leave to Construct Gas Transmission Facilities, January 6, 2006 (RP-2005-0022; EB-2005-0441; EB-2005-0442; EB-2005-0443; EB-2005-0473), p. 3.

60. This is because the public interest considerations in ss. 96(2) of the OEB Act (including the impact on customers respecting the “reliability and quality of service”) apply to the Board’s consideration of “the construction, expansion or reinforcement of the electricity transmission line.” The issue here is whether the proposed Facility has an impact on distribution reliability. The fact that a distributor may also have a need for its own facility is not relevant to that consideration.
61. The Board emphasized this point in a previous decision where it rejected the argument that, when considering the interests of consumers with respect to price, it should look at the price impacts of power from the generation facility as well as the transmission facility that was proposed to connected it to the grid. According to the Board:³⁸
- “The Board agrees with the Applicant that the relevant consideration is the impact on electricity transmission rates *due to the construction of the proposed facilities*. In this proceeding, the Board is not concerned with the net impact on the electricity commodity cost, which in any event is highly speculative.”
62. Applying that here, when considering the interests of consumers, the Board is not being invited by the Legislature to speculate on the impact on consumers of future distribution expansions and whether such future expansions contribute to meeting reliability requirements. The Board’s obligation is to determine whether the proposed Facility will have an impact on consumers with respect to price and reliability and quality of service. In this case, there is no allegation that the proposed Facility has such an impact. The issue is therefore not relevant.

HALDIMAND FEDERATION OF AGRICULTURE (“HFA”) – FURTHER INTERROGATORIES

63. On August 24, 2011 the HFA submitted additional interrogatories in relation to the Applicant’s responses to intervenor interrogatories. In Procedural Order No. 3, the Board noted that given that the additional interrogatories were not submitted according to the Board’s Rules of Practice and Procedure, the Applicant was not required to respond. However, in the spirit of transparency, the Applicant has provided responses to HFA’s additional questions in Schedule ‘A’ attached hereto.

³⁸ Decision and Order in an Application by Greenfield Energy Centre Limited Partnership for leave to construct, March 29, 2005 (EB-2005-0478), p. 12 (emphasis added).

CONCLUSION

64. The scope of the Board's mandate in a leave to construct proceeding is narrow and enshrined in legislation. The Applicant has demonstrated the need for the Project, which need is consistent with the promotion of the use of renewable energy sources. By virtue of the fact that the Facility will be entirely paid for by the Applicant, the Applicant has also demonstrated that the construction or operation of the Facility will not impact ratepayers. The reports from the IESO and Hydro One demonstrate neither the Facility nor the GREP, will adversely impact reliability or the quality of electricity service.
65. With respect, the issues raised by intervenors regarding broader transmission planning are not within the scope of the current proceeding. The Applicant therefore requests that the Board issue its final decision without further delay.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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SCHEDULE 'A'

**APPLICANT RESPONSE TO HALDIMAND FEDERATION OF AGRICULTURE FURTHER
INTERROGATORIES**

1. At what point is the wind and solar GREP generated power metered and delivered to the Ontario grid and ultimately paid for by the Ontario consumer?

The power from the GREP is delivered to the IESO-controlled grid at the point of connection to the N5M circuit. Please see the SIA for a further description of the connection schematic. The power from the GREP is metered on the generator side of the connection point.

Once the electricity from the GREP is delivered to the IESO-controlled grid, it is available to be purchased on the IESO wholesale market. The Applicant notes that it is not paid for by the Ontario consumer since the power purchase agreement with the OPA is a contract for differences.

2. Will the power generated by the wind component of the GREP be delivered to the grid at a different location the solar generated power?

No. Although the source of electricity is different in Wind and Solar facilities, the Applicant proposes to deliver the electricity to the same location.

3. Has the applicant identified the existence of active, dormant or abandoned natural gas wells on or near the Haldimand Right of Way? What measures can be undertaken to continue the availability of this resource to our members?

An inspection is being undertaken of petroleum resources within 75 meters of the Project Location, including the transmission line for Renewable Energy Approval. As part of this assessment and subsequent report, mitigation measures will be proposed to mitigate any potential effects to the Project and to users of the petroleum resources.

4. Is the applicant aware of any recent studies of noise level measurements at a distance of 550 meters or more from one or more wind turbine generators, under various atmospheric conditions in a rural setting?

A Noise Assessment Report has been prepared for the Project, which has demonstrated that the Project will operate within the established limits set out by the Ministry of the Environment at various wind speeds. In addition, all turbines will be located more than 550 meters from non-participating receptors. A copy of the Noise Assessment Report is available as part of the Draft Renewable Energy Approval Reports.