



EB-2011-0063

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 Grand
Renewable Wind LP for an Order granting leave to
construct a new transmission line and associated facilities
for the Grand Renewable Energy Park to be located in
Haldimand County.

BEFORE: Paula Conboy
Presiding Member

Ken Quesnelle
Member

December 8, 2011

DECISION AND ORDER

I. DECISION

For reasons that follow in this decision the Board approves Grand Renewable Wind LP's application for an Order granting it leave to construct the transmission line and associated facilities as described in its February 28, 2011 application. Further and again for reasons that follow the Board finds it necessary to apply certain conditions to its Order granting the leave to construct.

II. SCOPE OF APPLICATION

Grand Renewable Wind, LP ("GRWLP") filed an Application with the Ontario Energy Board (the "Board") dated February 28, 2011 under sections 92 and 97 of the *Ontario*

Energy Board Act, 1998, S.O. 1998, c.15, (Schedule B), (the “Act”) seeking an Order of the Board to construct transmission facilities and approval of a form of easement agreement. The transmission facilities are required to connect the Grand Renewable Energy Park (the “GREP”), to be located in Haldimand County, to the IESO-controlled grid. The transmission facilities consist of approximately 19 kilometres of 230 kilovolt (“kV”) transmission line, a collector substation consisting of two step-up transformers (34.5kV:230 kV), two transition stations to accommodate construction of an underground portion of the proposed 230 kV transmission line, and an interconnection station to connect to an existing Hydro One Networks Inc. owned 230 kV transmission line (collectively referred to as the “Transmissions Facilities” or the “Project”).

GRWLP is seeking leave to construct the Project for the GREP, which covers an area of 7600 hectares of mainly agricultural land, and will comprise a 153 MW wind power generating facility (the “Wind Project”), and a 100 MW solar photovoltaic generating facility (the “Solar Project”).

This Application is for approval to construct the Transmission Facilities and the form of easement only. GRWLP is not seeking any approvals from the Board through this Application for the GREP itself. All issues relating to the GREP, the Wind Project or the Solar Project, therefore, are outside the scope of this proceeding.

The Board assigned File No. EB-2011-0063 to the application.

III. THE BOARD’S JURISDICTION

The Board's power to grant an applicant leave to construct transmission facilities arises from section 92 (1) of the Act which states:

92 (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection.

In discharging its duties in this proceeding the Board is also bound by the provisions of section 96 of the Act which states:

96 (1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

(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 resources.

As discussed in further detail below, issues that might broadly be described as environmental issues are not within the Board's jurisdiction. These issues are dealt with through the separate Renewable Energy Approval ("REA") process, which does not involve the Board.

IV. THE PROCEEDING

The Board has chosen to summarize the record to the extent necessary to provide context to its findings. The full record of the proceeding is available on the Board's website.

The Board issued a Notice of Application and Written Hearing on April 1, 2011 and GRWLP served and published the Notice as directed by the Board.

Haldimand County Hydro Incorporated Motion

On April 29, 2011 Haldimand County Hydro Incorporated ("HCHI") filed a notice of motion under this proceeding and the Summerhaven proceeding (EB-2011-0027) seeking an order or orders of the Board to defer any final decision in EB-2011-0063 and EB-2011-0027 until the Board has conducted a generic proceeding. The generic

proceeding would deal amongst other things with the development of transmission lines in municipal rights-of-way ("ROW"); would establish procedures for the publication notice, participation and scheduling such proceeding; and would provide such other relief as the Board deems just and reasonable.

On May 30, 2011, the Board dismissed HCHI's Motion without a hearing. The Board held that the individual Board panels assigned to the Summerhaven and GRWLP applications were not empowered to initiate a generic proceeding. Only the Board as a whole could make such a decision. Although parties can request that the Board consider initiating a generic proceeding, that determination lies solely with the Board. The Board determined that the best place to hear many of the issues raised in the motion was through the existing hearing processes on the individual applications.

The Proceeding

The Board received several requests for intervenor and observer status as well as letters of comment. A number of these requests appeared to raise concerns about issues that are outside the scope of the Board's jurisdiction.

On May 18, 2011, the Board sent out a letter to all intervention applicants who filed their requests prior to that date reminding each party of the scope of the Board's jurisdiction in section 92 applications. The Board advised parties that:

- Environmental issues with respect to this project are considered through the separate Renewable Energy Approval ("REA") process that was being undertaken outside of the leave to construct application before the Board;
- The Board would be asking GRWLP to file an update on the status of the REA process, and that the Board will provide information on GRWLP's update; and
- The Board might seek further information regarding the nature of the proposed intervention in the Board's process. Specifically, how the expressed interest of intervenors relate to the matters that fall within the Board's jurisdiction.

By letter to GRWLP issued May 18, the Board sought further information from GRWLP in order to better inform all parties on the REA process. The Board also asked for clarification of the extent to which the route identified in the application before the Board is expected to be the final route subject to the REA approval.

In its response filed on May 26, GRWLP confirmed that the route in the leave to construct application and pre-filed evidence is the final route, subject to REA approval. GRWLP also indicated that it would update the Board on progress with respect to such Ground Leases as it became available.

On June 7, the Board issued another letter to provide parties with additional information it received from GRWLP with respect to the REA process. The Board's intention was to clarify the appropriate avenue for parties to bring forward any environmental concerns with the Transmission Facilities. The Board also used the letter to reiterate the scope of the Board's jurisdiction in applications of this kind.

On June 17, 2011 the Board issued Procedural Order No.1 requesting all previous intervention applicants to re-file with the Board no later than Monday, June 27, to clarify how their interests are within the Board's jurisdiction. Several of the original intervention applicants re-filed their requests with the Board. Procedural Order No.1 also specified dates for the filing of interrogatories, and for responses to be submitted by GRWLP.

The Board granted intervention status to HCHI, Hydro One Networks Inc ("Hydro One"), the Independent Electricity System Operator ("IESO"), the Six Nations Council, Haldimand Federation of Agriculture, the Corporation of Haldimand County, Norm Negus, Quinn Felker, Bruce Genery, Doug Maxwell and Geraldine Ratcliff & Lee Russell. The Board granted cost eligibility to the Six Nations Council, Nathan Armstrong, Quinn Felker and the Haldimand Federation of Agriculture to the extent that any evidence or submissions filed by those intervenors pertains to matters within the scope of the proceeding. Ms. Linda S. Link requested and was granted observer status. There were also numerous letters of comment and information from interested parties.

Procedural Order No.2 was issued on August 3, 2011 following a request from GRWLP for an extension of time to submit interrogatory responses, which the Board granted.

By letter dated August 18, 2001, HCHI advised the Board that it intended to file evidence relating to the need for a new transformer station in Haldimand County. HCHI argued that the evidence was necessary because the Transmission Facilities that are the subject of the current application would provide an ideal connection to the new transformer station. Absent a requirement that the GRWLP be a licensed transmitter, it would presumably have no obligation to connect HCHI and allow it to use the

Transmission Facilities, an issue of concern to HCHI. The evidence supporting the need for a new transformer station was filed on August 30, 2011.

On September 6, 2011 GRWLP filed a letter with the Board asking it to strike the evidence filed by HCHI on the ground that it had no relevance to the proceeding.

As indicated by the Board in Procedural Order No. 3, issued on September 8, 2011, this proceeding represents one of the first times since the enactment of the *Green Energy and Green Economy Act, 2009* that the Board has considered a leave to construct application from a renewable generation facility. Throughout the proceeding there appeared to be a level of disagreement amongst the parties regarding exactly what was within the scope of the proceeding. Although the Board received a number of submissions (in the form of letters to the Board secretary's office) regarding parties' views on jurisdictional issues, it did not occur in a structured manner throughout this proceeding rendering it difficult for the Board to make any interim rulings. As a result, the Board sought as part of final argument submissions which addressed the following questions:

1. What are the responsibilities, if any, of the applicant to provide access to its proposed Transmission Facilities?
2. 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?
3. Does the fact that the proposed facilities will be located largely within a municipal ROW have any bearing on the applicant's obligation regarding future requests for connection?
4. 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?

The Board's findings with respect to these questions, where applicable, are found in the relevant sections below.

V. EVIDENCE AND BOARD FINDINGS

a. Prices and the reliability and quality of electricity service

The proposed Transmission Facilities are noteworthy in that the proposed route is along a municipal ROW, parts of which already accommodate the electrical distribution system owned and operated by HCHI. There have been claims made that the introduction of a high voltage transmission system in close proximity to an existing distribution system can result in negative impacts on the distribution system.

In Procedural Order No. 3, the Board asked parties to make submission on whether section 96(2) permitted the Board to consider the impact of the Project on the reliability of the current or future distribution system owned and operated by HCHI. The Board's assessment of the prices, reliability and quality of electricity service with a transmission leave to construct application does not typically necessitate consideration of these factors as they relate to electricity distribution. This is due to the fact that distribution systems are usually not located close to the transmission facilities in question. However, the Act does not specifically limit the section 96(2) considerations to the transmission system or the customers thereof. The Board therefore finds that the consideration of prices, reliability and quality of electricity service can include consideration of impacts on neighbouring transmission and distribution electricity systems and the customers connected to them.

Transmission System

Price Impacts

In regard to the impact on transmission rates, GRWLP indicated in its pre- filed evidence¹ that there would be no adverse impact on ratepayers as it would pay the entire cost of the proposed Transmission Facilities. GRWLP further re-stated this position in its Argument in Chief² where it said that:

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

¹ Exh. A/Tab 2/Sch. 1/par. 21

² Argument in Chief, September 16, 2011, par. 38

No party disputed GRWLP's submission in regard to its claim that the proposed facility will not impact transmission rates in Ontario.

The Board accepts that there is no negative price impact arising from the costs associated with this project as they relate to the transmission system.

System Impact Assessment

System Impact Assessments ("SIA") are conducted by the IESO to assess whether a connection applicant's proposed connection with the IESO-controlled grid would have an adverse impact on the reliability of the integrated power system and whether the IESO should issue a notice of approval or disapproval of the proposed connection under Chapter 4, section 6 of the Market Rules. This is a technical document intended to provide a detailed review of the components of the proposal and its impacts on system operating voltage, system operating flexibility and the implications for other connections to deliver and withdraw power from the transmission system. GRWLP filed the final SIA on August 2, 2011, as required by the Filing Requirements for Transmission and Distribution Applications (the "Filing Requirements") as they relate to leave to construct proceedings. The SIA Report³ indicated that the scope of its study focused on the evaluation of the impact of the two sources of generation, from the wind and solar power projects via the Hydro One owned 230 kV circuit N5M, on the reliability of the IESO-controlled grid. The SIA Report also included a Protection Impact Assessment Report⁴ carried out by Hydro One for the IESO, which confirmed that it is feasible to connect the proposed 154 MW of wind and 100 MW of solar generation to circuit N5M as long as certain proposed changes are implemented⁵. The SIA Report indicated also that the proposed Project will not have a material adverse impact on the reliability of the IESO-controlled grid and recommended that a notification of conditional approval be issued subject to implementation of the requirements listed in the report⁶.

GRWLP indicated⁷ that it is in contact with the IESO in regard to various issues including "unbundling" the SIA given that the Solar Project and Wind Project will be owned by different entities. GRWLP also indicated that the Board may also take it

³ IESO's SIA Final Report, May 5, 2011 (Filed August 2, 2011), page 6

⁴ IESO's SIA Final Report, May 5, 2011 (filed August 2, 2011), pages 68 - 72

⁵ Ibid, page 70, Executive Summary

⁶ IESO's SIA Final Report, May 5, 2011 (filed August 2, 2011), page 10

⁷ Argument in Chief, September 16, 2011, paragraph 27

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, and the fact that the Solar Project will be owned by an affiliate of GRWLP does not change the findings of the SIA, which are technical in nature.

The IESO in its submission⁸ indicated that the IESO is not able to approve a specific metering configuration. GRWLP maintains that it is not required to obtain a transmitter licence, and that approval of the metering configuration will be granted during the Facility Registration and Market Entry process.

Customer Impact Assessment

As required by the Filing Requirements for leave to construct proceedings, a final Customer Impact Assessment Report ("CIA") conducted by Hydro One was filed on August 2, 2011. This study is designed to assess the implications of the project for other transmission customers of the transmission system. The assessment confirmed that the project is not expected to have any significant negative implications for other specific customers of the transmission system.

The Board notes that GRWLP confirmed⁹ that it will make its required contribution towards the cost of short circuit mitigation measures at Caledonia TS. This requirement is triggered by the increase in short circuit levels at Caledonia TS to within a 5% limit of the maximum allowed level.

The Board accepts that the impacts on both the transmission system and its directly connected customers have been identified as well as the mitigation measures required to overcome those impacts. The Board conditions its granting of the leave to construct the project on GRWLP's execution of the required mitigations identified in the SIA and CIA reports.

Distribution System (HCHI)

The Board notes that GRWLP in its Argument in Chief¹⁰ indicated that in the event that any of HCHI's existing distribution infrastructure needed to be relocated, GRWLP would

⁸ IESO's submission, September 23, 2011/pp. 2-3/

⁹ Argument in Chief, September 16, 2011, paragraph 28

¹⁰ Argument in Chief, September 16, 2011, paragraph 22

be responsible for any costs incurred related to such a re-location. GRWLP further indicated in its argument that studies carried out in Summerhaven proceeding (EB-2011-0027) demonstrated that it was evident that the issues raised by HCHI in that proceeding regarding induced voltage or grounding could be mitigated and addressed in the design of the proposed Project. GRWLP also indicated in its argument that as currently designed, the majority of the Transmission Facilities would be on the opposite side of the road from any HCHI distribution infrastructure. As a result GRWLP asserted that it did not anticipate that any potential problem would occur that could not be mitigated.

In its submission HCHI indicated that¹¹ GRWLP's evidence¹² included a map of the transmission line which was devoid of any specific information regarding the alignment of the proposed transmission line within the municipal ROW or the extent of impact on the HCHI distribution system. HCHI further indicated that the application also included the cross-section of the tangent steel pole¹³ which made no provision for joint use, and thus, HCHI was left without sufficient information to understand how the project would impact HCHI and its ratepayers.

In reply to HCHI's noted concerns, GRWLP¹⁴ indicated that HCHI's ratepayers would not be impacted. GRWLP further indicated that it will absorb not only the cost of construction and operation of the Transmission Facilities, but also the costs related to the relocation (including burial and crossing) of any existing HCHI infrastructure that is necessitated by the Transmission Line¹⁵. GRWLP also indicated¹⁶ that reliability and quality of service of HCHI's distribution infrastructure would not be adversely affected, and that GRWLP has taken steps to ensure that the Transmission Facilities are located on the opposite side of the Municipal ROW as much as possible and it would absorb the cost of relocating HCHI infrastructure to the other side of the municipal ROW in instances where the Transmission Facilities are co-located adjacent to HCHI infrastructure. Furthermore GRWLP stated that it would meet all applicable codes and standards.

¹¹ HCHI's Submission, September 23, 2011, page 2

¹² Exh. B/Tab 3/Sch. 2/

¹³ Exh. B/Tab 4/Sch. 5

¹⁴ Reply Submission, October 7, 2011, par.19

¹⁵ Applicant's Interrogatory Responses to HCHI ("HCHI IRRs") filed August 15, 2011, IRR# 1(d).

¹⁶ *ibid*

In its assessment of impacts on prices, reliability and quality of electricity service the Board considers it appropriate that GRWLP be responsible to pay for any direct impacts its Project causes to the quality or reliability of the electricity service provided by HCHI's existing system. HCHI has made claims that both its current and future use of its system will (or may) be negatively impacted. In the context of the current proceeding, the Board does not consider it appropriate that GRWLP be held responsible for any alteration that HCHI may have to make to its future plans. This consideration would be beyond the scope of this proceeding and is not supported by any governing planning framework.

It is not necessary for the Board to make findings here as to the exact extent of what accommodation is required by GRWLP to mitigate any negative impacts that its project will have on the existing distribution system. The existence of applicable construction standards and/or codes as well as any requirements of the Electrical Safety Authority, in its role pursuant to Ontario Regulation 22/04, to ensure compliance of distributors in managing distribution systems in accordance with the noted regulation should serve to identify what accommodation is required.

The Board conditions its granting of the leave to construct on GRWLP providing the financial contributions to HCHI necessary to accommodate any mitigation measures to existing distribution facilities deemed necessary to ensure compliance with any relevant code, standard or Electrical Safety Authority requirement.

b. Project Need

As observed above, the Board's jurisdiction in a section 92 application is limited to a consideration of the interests of consumers with respect to prices, the reliability and quality of electricity service, and where applicable and in a manner consistent with the policies of the provincial government, the promotion of the use of renewable energy resources. "Project Need" is not itself listed as a consideration for the Board. In cases where a proponent will be seeking to recover the costs of a project through rates, the Board typically considers the "need" issue through the lens of price – in other words ensuring that consumers are not saddled with costs where a project is not actually needed. Similarly, routing alternatives are often considered from the perspective of price to ensure that the option chosen is the most cost effective. In the current case, all of the costs of the Project itself are being covered by GRWLP. GRWLP will not be seeking any rate to recover these costs, and therefore the costs of the Project will not

be passed directly to ratepayers (as well see finding above on possible project costs associated with potential impacts to the existing distribution system). The typical “price” consideration, therefore, does not necessarily apply in this case.

Regardless, the Board observes that there is a strong case for both the need for the Project and the route proposed by GRWLP. GRWLP indicated that it has executed two power purchase agreements with the Ontario Power Authority for the power delivery expected from the Wind Project and the Solar Project, respectively, to the IESO-controlled grid¹⁷. The Project is required to convey the electricity produced by these facilities to the IESO-controlled grid. GRWLP further indicated that the proposed Project is therefore consistent with government policy in respect of the promotion of renewable energy sources as the transmission line would be used to connect the two projects to the transmission system owned by Hydro One.

Six Nations Council disagreed with GRWLP’s rationale for its need for the transmission line¹⁸. Six Nations Council stated in paragraph 10 of its submission that:

10. By definition, there is no Project Need for the Transmission Line if both the proposed Wind Project and Solar Project are not permitted to be built.

Six Nations Council further indicated that since neither the contemplated Wind Project nor the contemplated Solar Project have received the required REA from the Ontario Ministry of the Environment, the Board should defer consideration of this application until the REA is secured. In its reply, GRWLP noted that it expected that the receipt of a REA would be a condition of approval in any order issued by the Board.

The Board accepts that the Project is needed in order to transmit the electricity generated by the two generation facilities. The Board’s approval will be conditioned, however, on the two generation projects receiving the REA and any other approvals necessary for their construction.

¹⁷ Argument in Chief, September 16, 2011, paragraph 19.

¹⁸ Submissions of Six Nations Council, September 23, 2011, pages 4-5, paragraphs 9 - 17

c. Project Routing

GRWLP provided evidence¹⁹ that it examined six different routing options, and that it has chosen the route with the least impact to the environment and landowners. GRWLP submitted that the chosen route will meet all regulatory standards.

Board staff noted in its submission that GRWLP's response to a HCHI interrogatory²⁰, provided a step by step description along with a map depicting the six alternatives and the process of elimination which ended with the selected proposed route. Based on that response, Board staff indicated agreement with GRWLP's selected route.²¹

HCHI noted in its submission²² that GRWLP's proposed route is located within a few kilometres of two other significant renewable energy generation projects: (1) Summerhaven Wind Energy Centre ("Summerhaven"), subject of a separate leave to construct proceeding EB-2011-0027 and (2) the Port Dover and Nanticoke Windfarm ("PDNW"). HCHI's position²³, apart from generally not supporting the location of transmission facilities within municipal ROWs, is that the proposed route has not been demonstrated to be superior to another abandoned option, notably GRWLP's Option 1 or the HCHI's proposed Modified Option 1. HCHI indicated in its submission that its Modified Option 1 would allow for the sharing of a common connection amongst the three projects, with no usage of a municipal ROW and a requirement for a shorter transmission (25 km versus 28 km) line. HCHI further submitted that for the Board to meet its objectives and to ensure integrated system planning, the current route should not be approved. Rather, as a result of the proximity of GRWLP's project to the Summerhaven and the PDNW projects, a common connection for the three projects should be considered.

GRWLP in its reply submission²⁴ addressed HCHI's concerns in regard to the proposed route stated in part that:

¹⁹ Argument in Chief, September 16, 2011, paragraphs 20 - 21

²⁰ Applicant Response to HCHI Interrogatory # 2, Question (h), August 15, 2011, pages 6 -8

²¹ Board staff submission, September 23, 2011, p. 4, section B.2

²² HCHI's Submission, September 23, 2011, page 4

²³ HCHI's Submission, September 23, 2011, pages 5-9

²⁴ Applicant reply Submission, October 7, 2011, par. 25

“there are many reasons that a route that attempted to coordinate with the Summerhaven and Port Dover project was not possible, including but not limited to: (i) the risk associated that one of the three projects does not (sic) proceed; (ii) all three projects have different commercial operation dates, with a spread of more than 18 months between all three projects; (iii) financing issues related to risk, which risk substantially increases when there are elements that are outside of the control of the developer (such as the development of neighbouring projects and transmission lines); (iv) protection and control coordination given that the proponents are using different technologies and different procurement methods, etc”.

GRWLP also indicated in its reply submission²⁵ that the concerns raised by HCHI seem to be related to matters of electricity policy rather than issues contemplated within the scope of section 96(2), and that a leave to construct for a privately owned generation connection transmission line is not the forum to carry out regional planning, to raise issues that are of general importance to the regulatory framework governing the connection of renewable projects.²⁶

In Procedural Order No. 3, the Board asked parties to make submissions on relevance in this proceeding of broader transmission planning issues, and what responsibilities GRWLP has, if any, with respect to these broader transmission planning issues.

The Board has provided the context in which it typically reviews the route in the “Project Need” section above. To reiterate, the Board’s focus would typically be on the cost effectiveness of the route where the price consideration is triggered by a cost to ratepayers. Given the findings in this decision as they relate to cost responsibilities there is no need for the Board to consider the route from a price perspective. As well, the Board has earlier communicated its views on the route considerations in the context of the REA process.

²⁵ Applicant reply Submission, October 7, 2011/par. 16

²⁶ HCHI Submission, September 23/p. 3/par. 16

The Board considers the other routing issues that have been raised to either be beyond the scope of this proceeding or in the case of the municipal ROW dealt with by the appropriate parties outside of this proceeding.

With respect to the issues raised by HCHI concerning the consideration of other area projects, the Board has found, on the matter of cost responsibility for any impact on HCHI's future distribution system plans, that there is no governing planning framework in place that conditions the Board's review of section 92 applications.

The Board notes Hydro One's submission that the Board's current Regional Planning for Electricity Infrastructure initiative (EB-2011-0043) or some other generic forum would be a more appropriate venue for a review of common issues arising from multiple projects in the same general proximity. The Board expects that the participants in the Board's Regional Planning initiative will take note of this application and decision in the context of that consultation.

With respect to the use of the municipal ROW, the Board notes that GRWLP indicated in its Argument in Chief²⁷ that Haldimand County, the owner of the municipal ROW in which 95% of the Transmission Line will be built, although an approved intervenor, did not submit any interrogatories in this process. The Board also notes that the Haldimand County did not make any submissions in regard to the proposed route and that GRWLP in its Reply Submission²⁸ stated in part that:

*Haldimand County has agreed to allow GRWLP to use the Municipal ROW and has entered into a Community Vibrancy Fund Agreement, which provides a form of road use agreement.*²⁹

There does not appear to be any dispute between GRWLP and the owner of the municipal ROW on which the Board would need to consider its responsibility to make findings in the resolution of such a dispute.

²⁷ Argument in Chief, September 16, 2011/pp. 2 -3/par. 5

²⁸ Applicant reply Submission, October 7, 2011/par. 20

²⁹ See Applicant's Submissions, filed September 16, 2011/par. 30.

d. Form of easement

Section 97 of the Act states:

In an application under section 90, 91 or 92, leave to construct shall not be granted until GRWLP satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.

Pursuant to this section, GRWLP has provided a form of easement for the Board's approval.

The Board notes that the proposed Project will be built across land with three different types of owners, each requiring a distinct type of agreement. The three types of agreement are: three parcels of privately owned land – each requiring an Option Agreement and Ground Lease³⁰; the Haldimand ROW³¹ which is owned by Haldimand County; and the Ministry of Infrastructure (“MOI”) Lands – the Option agreements sought by the Ontario Realty Corporation (“ORC”) who is the land manager of MOI³².

Three Landowner Easement Agreements (the “Ground Leases”)

The Board notes that in regard to the privately held lands, GRWLP in its Argument in Chief³³ indicated that each of the three Landowners was provided with the appropriate Notice of Application. The Board notes that one of the three landowners who is an intervenor was replaced with another landowner as reported by GRWLP in a Board staff interrogatory³⁴, (where Landowner A was replaced with Landowner D). One of the three landowners has already reached an agreement with GRWLP, and negotiations with the other two landowners continue. A draft version of the Ground Leases was provided with the application.

³⁰ Exh. A/Tab 2/Sch. 1/paragraph 13 & Exh. B/Tab 3/Sch. 1/paragraphs 41, 43

³¹ Exh. A/Tab 2/Sch. 1/paragraphs 14 and 15 & Exh. B/Tab 3/Sch. 1/par. 54 & Exh. B/Tab 3/Sch. 3, Form of Easement _ Haldimand ROW

³² Exh. B/Tab 3/Sch. 1/paragraphs 44, 45, 46

³³ Argument in Chief, September 16, 2011/par. 31

³⁴ Applicant Response to Board staff interrogatory # 3 Question (ii)

Haldimand Right of Way ("ROW") Form of Easement Agreement

The Board notes that in regard to the Haldimand ROW, GRWLP in its Argument in Chief³⁵ indicated that it 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 GRWLP's use of the Haldimand ROW. The Board also notes that GRWLP confirmed that it is not seeking exclusive use of the Haldimand ROW³⁶.

In its submission³⁷ HCHI indicated that GRWLP did not seek approval of the form of agreement for the Haldimand ROW, which is included in GRWLP's pre-filed evidence.³⁸ HCHI raised the concern that an easement is to be registered against the property identification number and many ROWs do not have such information, and that it is unclear if such information is available in the present circumstances. HCHI is of the view that GRWLP should submit a revised ROW Form of Easement Agreement consistent with its commitment to not seek exclusivity.

GRWLP responded³⁹ to HCHI's concerns indicating that the purpose of the Board's review of land owner agreements is to ensure that the affected landowner is protected. GRWLP further indicated that the Filing Guidelines⁴⁰ require GRWLP to file materials that demonstrate "compliance with legislative requirements and respects the rights of affected persons." GRWLP concluded that in the present circumstances, the landowner, Haldimand County, has not raised any concerns in the proceeding.

In Procedural Order No. 3, the Board asked parties to make submissions on whether the fact that the proposed facilities will be located largely within a municipal ROW have any bearing on GRWLP's obligation regarding future requirements for connection. GRWLP and Board staff argued that whether a project was to be located on a municipal ROW or not had no bearing on future connection requirements. HCHI argued⁴¹ that:

³⁵ Argument in Chief, September 16, 2011/par. 30

³⁶ *ibid*

³⁷ HCHI's Submission, September 23, 2011/pp. 8 – 9/paragraphs 49 - 53

³⁸ Exh. B/Tab 3/Sch. 3

³⁹ Reply Submission, October 7, 2011/par.27

⁴⁰ EB-2006-0170: Filing Guidelines for Transmission and Distribution Applications/s. 4.3.6./p. 28.

⁴¹ HCHI Submission, September 23, 2011/p.18/par. 97

“permitting a private single purpose interest to use that finite asset at no cost and to have no corresponding obligation to ensure the public interest is furthered would be inconsistent with the legislative scheme.”

As discussed in further detail below, the Board does not make a determination on this issue.

Option Agreements with Ontario Realty Corporation (“ORC”) – Ministry of Infrastructure

The Board notes that GRWLP indicated in its Argument in Chief⁴² that the terms of the ORC Option Agreements are currently being negotiated between the ORC and GRWLP’s parent company, Samsung Renewable Energy Inc. (“SRE”). The Board also notes that all commercial terms have been agreed to between GRWLP and ORC, 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 government⁴³.

The Board is satisfied with and approves the form of the filed ground lease⁴⁴. The Board will not require re-filing of the ROW Form of Easement Agreement with Haldimand County. The record indicates that Haldimand County is currently working with GRWLP to address any of its concerns and the Board accepts that GRWLP’s filed documentation satisfies the Board’s filing requirements.

VI. OTHER ISSUES

a. Obligation to Provide Access and Licensing Issues

In Procedural Order No. 3, the Board asked parties to make submissions on (amongst other things): what are the responsibilities, if any, of GRWLP to provide access to its proposed facilities?

While the transmission facilities will be used to transmit the electricity generated from both the Wind Project and the Solar Project to the IESO-controlled grid, GRWLP submitted that any electricity generated by the Solar Project will be transmitted for a

⁴² Argument in Chief, September 16, 2011/par. 32

⁴³ Applicant Response to Board staff Interrogatory #6, Question (i)

⁴⁴ Exh. B/Tab 3/Sch. 2

price that is no greater than that required to recover all reasonable costs. In transmitting the electricity generated from the Solar Project, the GRWLP stated that it relies on section 4.0.2(1)(d) of Ontario Regulation 161/99, Definitions and Exemptions made pursuant to the Act, to be exempt from the requirement to obtain a transmitter licence under section 57(b) of the Act. GRWLP has also indicated that it considers itself to be a generator pursuant to section 56 of the Act once the Wind Project achieves commercial operation. GRWLP indicated its intention to submit a notice of proposal to own transmission facilities pursuant to section 81 of the Act when it applies for a generating licence from the Board.

In its submissions on this issue, Board staff submitted that a transmitter only has an obligation to connect if it is licensed, and that licensed transmitters must comply with the provisions of the Transmission System Code ("TSC"). Board staff noted GRWLP's position was that it was exempt from the requirement to hold a licence pursuant to section 4.0.2(1)(d) of O. Reg. 161/99, and therefore did not have any formal duty to provide access to its proposed facilities. Board staff questioned this interpretation of O. Reg. 161/99, and submitted that it was not clear that GRWLP is exempt from holding a transmission licence. However, Board staff also submitted that the licensing status of GRWLP is not a relevant consideration in a leave to construct application, and that the Board need not make a determination on this issue in order to approve the application.

In its reply submission GRWLP agreed with Board staff that its licensing status is not a relevant consideration in a leave to construct application and that the Board should not address the issue in this decision. GRWLP did, however, respond to Board staff's arguments and reiterated its position that it is exempt from holding a transmission licence.

The question of whether GRWLP is exempt from the requirement to obtain a transmission licence and comply with the provisions of TSC is one that ultimately needs to be addressed. However, due to the scope of the Board's jurisdiction in applications of this kind, the current proceeding is not the appropriate venue to make this determination. The Board accordingly makes no findings on this matter in this decision.

b. Aboriginal Consultation

Six Nations Council argued that the Board should defer its decision until (amongst other things) the Crown's duty to consult has been fulfilled. Six Nations Council recognized

that there are statutory limits on the Board's jurisdiction to directly address consultation itself; however it submitted that the Board cannot approve the application until the Crown's constitutional duties have been satisfied.

GRWLP relies on the Board's decision in EB-2009-0120 ("Yellow Falls"), in which the Board determined that it did not have the jurisdiction to consider Aboriginal consultation issues in a section 92 leave to construct case except possibly where the Aboriginal or treaty right in question could be directly tied to prices, reliability, or the quality of electricity service.⁴⁵ The reason for this finding was that section 96(2) of the Act specifically limits the Board's consideration to these factors⁴⁶. The Supreme Court's decision in *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council* ("Rio Tinto"), which was issued after Yellow Falls, appears to support the Board's conclusions. The Court stated:

*"[t]he power to decide questions of law implies a power to decide constitutional issues that are properly before it, absent a clear demonstration that the legislature intended to exclude such jurisdiction from the tribunal's power."*⁴⁷

The Board does not dispute that, to the extent any Aboriginal or treaty rights are potentially affected by the Project, the Crown's duty to consult will have to be discharged. However, the forum for that discussion is the REA process. One of the conditions to this approval is that construction cannot commence until (amongst other things) GRWLP has obtained an REA approval. The Board can be satisfied, therefore, that the Project will not be built until any duty to consult issues are addressed. To the extent that the Six Nations Council is not satisfied with the results of the REA process, it can pursue its remedies (for example) through the courts. The Board will therefore not defer its decision.

c. HCHI Request for Cost Eligibility

In its final submission HCHI requested permission to make submissions in respect of costs in this proceeding citing the considerable expense incurred by HCHI in this

⁴⁵ Yellow Falls decision, p. 9 and p. 11.

⁴⁶ section 96(2) of the Act has been amended since then by adding "Where applicable and in a manner consistent with policies of the Government of Ontario, the promotion of the use of renewable energy sources."

⁴⁷ *Rio Tinto*, 2010 SCC 43, para. 69 (emphasis added).

proceeding and in light of the public interest and importance of the issues raised by HCHI.

In assessing a party's eligibility for costs, the Board is guided by the *Practice Direction on Cost Awards* (the "Practice Direction"). The Board notes that HCHI is a distributor and is explicitly excluded from eligibility as per section 3.05 of the Practice Direction. sections 3.06 and 3.07 of the Practice Direction provide the basis on which the Board will consider exceptions to the applicability of section 3.05. HCHI is not a customer of GRWLP therefore section 3.06 does not apply. In consideration of the applicability of section 3.07 the Board notes HCHI's claim that it raised important matters of public interest. The Board considers HCHI's intervention in this application to have been largely focused on matters respecting its own stated interests. While there may be other entities that would have similar interest in the matters examined in this application if they were to be impacted in a similar fashion by a similar application the Board does not consider this potential scenario to represent special circumstances, as contemplated in section 3.07 that would result in having GRWLP cover HCHI's costs of intervention. The Board therefore finds that HCHI is not eligible for an award of costs.

d. Cost Claims

The Board reminds parties that were granted cost eligibility in its July 12, 2011 Decision and Order that cost eligibility will be considered to the extent that costs relate to matters directly within the scope of this proceeding as stated in the Notice of Application and Written Hearing dated April 1, 2011, under the section titled Board Jurisdiction. The Board also advises applicants for cost claims to refer to the noted July 12 Decision and Order for guidance as to which costs may or may not be recovered, and to the Practice Direction on Cost Awards and related forms that are available on the Board's website at www.ontarioenergyboard.ca.

THE BOARD ORDERS THAT:

1. Grand Renewable Wind LP is granted:
 - a. pursuant to section 92 of the Act, leave to construct electricity transmission facilities, as described in the first paragraph of section II. titled "SCOPE OF APPLICATION" in this Decision and Order, connecting the Grand Renewable

Energy Park to the IESO-controlled grid subject to the Conditions of Approval attached as Appendix "A" to this Order; and

- b. pursuant to section 97 of the Act, approval of the form of easement agreement included in the pre-filed evidence of Grand Renewable Wind LP..
2. Parties that were granted cost eligibility may file with the Board by **Friday, December 16, 2011**, their cost claims, and deliver a copy to Grand Renewable Wind LP, in accordance with the Board's Practice Direction on Cost Awards.
3. Grand Renewable Wind LP may object to any of the cost claims no later than **Friday, January 6, 2012**, by filing its submission with the Board and deliver a copy to the party whose cost claim is disputed.
4. If an objection to any of the cost claim is filed by Grand Renewable Wind LP, the party whose cost claim is disputed, will have until **Friday, January 13, 2012** to file a reply submission to the Board, with a copy to Grand Renewable Wind LP as to why its cost claim should be allowed.
5. Grand Renewable Wind LP shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote file number EB-2011-0063, be made through the Board's web portal at www.errr.ontarioenergyboard.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

ISSUED at Toronto on December 8, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX "A"

TO DECISION AND ORDER

BOARD FILE NO. EB-2011-0063

DATED December 8, 2011

**Conditions of Approval
Grand Renewable Wind LP
Transmission Line and related transmission facilities
(Collectively the "Transmission Facilities")
[EB-2011-0063]**

1 0 General Requirements

- 1.1. Grand Renewable Wind LP ("GRWLP") shall construct the Project in accordance with its Leave to Construct application, and evidence, except as modified by this Order and these Conditions of Approval.
- 1.2. Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2012 unless construction of the Project has commenced prior to that date.
- 1.3. GRWLP shall satisfy the Independent Electricity System Operator ("IESO") requirements and recommendations as reflected in the System Impact Assessment document dated May 5, 2011, and such further and other conditions which may be imposed by the IESO.
- 1.4. GRWLP shall satisfy the Hydro One Networks Inc. requirements as reflected in the Customer Impact Assessment document dated May 6, 2011,
- 1.5. GRWLP shall advise the Board's designated representative of any proposed material change in the Project, including but not limited to material changes in the proposed route,
- 1.6. GRWLP shall obtain all necessary approvals, permits, licences, certificates and easement rights required to construct, operate and maintain the Project, and shall provide copies of all such written approvals, permits, licences and certificates upon the Board's request.

2.0 Reliability Considerations - Transmission and Distribution Lines

- 2.1 GRWLP shall be responsible to pay for the mitigation requirements to avoid any direct impacts its Transmission Facilities causes to the quality or reliability of the electricity service provided by Haldimand County Hydro Incorporated's ("HCHI") existing system. Such requirements are to be determined through an assessment of construction standards and/or codes as well as any requirements of the Electrical Safety Authority, in its role pursuant to Ontario Regulation 22/04.

**Conditions of Approval
Grand Renewable Wind LP
Transmission Line and related transmission facilities
(Collectively the "Transmission Facilities")
[EB-2011-0063]**

3.0 Project and Communications Requirements

- 3.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Electricity Facilities and Infrastructure Applications.
- 3.2 GRWLP shall designate a person as Project engineer and shall provide the name of the individual to the Board's designated representative. The Project engineer will be responsible for the fulfillment of the Conditions of Approval on the construction site. GRWLP shall provide a copy of the Order and Conditions of Approval to the Project engineer, within ten (10) days of the Board's Order being issued.
- 3.3 GRWLP shall develop, as soon as possible and prior to the start of construction, a construction plan. The construction plan shall cover all material construction activities. GRWLP shall submit two (2) copies of the construction plan to the Board's designated representative at least ten (10) days prior to the commencement of construction. GRWLP shall give the Board's designated representative ten (10) days written notice in advance of the commencement of construction.
- 3.4 GRWLP shall furnish the Board's designated representative with all reasonable assistance needed to ascertain whether the work is being or has been performed in accordance with the Board's Order.
- 3.5 GRWLP shall furnish the Board's designated representative with two (2) copies of written confirmation of the completion of Project construction. This written confirmation shall be provided within one month of the completion of construction.

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