

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 White River Hydro LP and Gitchi Animki Energy Limited Partnership 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.

APPLICANTS' ARGUMENT IN CHIEF

1. White River Hydro LP and Gitchi Animki Energy Limited Partnership (the “**Applicants**”) filed an application with the Ontario Energy Board (the “**Board**”) on December 6, 2011 under sections 92 and 96(2) of the OEB Act. As further described herein, the original application in this case was filed by White River Hydro LP and Pic Mobert First Nation as joint venture partners (the resulting partnership referred to herein as the “**Joint Venture**”), however a corporate reorganization resulted in a change to the second named Applicant from Pic Mobert First Nation to Gitchi Animki Energy Limited Partnership, a change which was accepted by the Board.
2. The Applicants have applied for an order of the Board granting leave to construct an electricity transmission line and related facilities (collectively, the “**Transmission Facility**”) as described below:
 - (i) A single 115 kV electricity transmission line (the “**Transmission Line**”) approximately 23.5 kilometres in length, which will connect the two hydroelectric generating facilities (the Niizh Facility and the Bezhig Facility, further described herein) to the Independent Electricity System Operator (IESO)-controlled grid. The Transmission Line will begin at the downstream Niizh Facility, connect the Bezhig Facility and terminate at the interconnection point with Hydro One Networks’ (“**Hydro One**”) M2W 115 kV circuit;
 - (ii) A switching station will be located adjacent to the M2W circuit;
 - (iii) A switchyard located adjacent to the Niizh Facility powerhouse that will connect the Niizh Facility to the Transmission Line; and

- (iv) A switchyard located adjacent to the Bezbig Facility powerhouse that will connect the Bezbig Facility to the Transmission Line.
3. The Transmission Facility will be located near the community of Mobert, which is occupied by Pic Mobert First Nation, and the Town of White River. The Transmission Facility will be used to connect to hydro electric generating stations (the “**Hydro Facilities**”) on the White River known as the Bezbig Facility with a total installed capacity of 8.9 MW and the Niizh Facility with a total installed capacity of 10 MW (the Hydro Facilities and the Transmission Facility referred to collectively as the “**Project**”). Pic Mobert First Nation and White River Hydro LP were awarded two separate power purchase agreements for each of the Hydro Facilities under the Ontario Power Authority’s FIT Program in April 2010.¹
 4. The Board issued a Notice of Application dated January 24, 2012, and directed the Applicants to serve and publish the Notice. The Board received requests for intervenor status from Pic River First Nation (“**PRFN**”), Innergex Renewable Energy Inc. (“Innergex”) and the Independent Electricity System Operator (“**IESO**”).
 5. The Applicants did not object to the interventions, and the Board issued Procedural Order No. 1 on February 23, 2012, granting intervention status to PRFN and eligibility to apply for an award of costs as well as granting intervention status to Innergex and to the IESO.
 6. On February 25, 2012, the Board received a letter from the Applicants indicating that for commercial reasons, on December 7, 2011 Pic Mobert First Nation formed Gitchi Animki Energy Limited Partnership (“**GAELP**”) and transferred its 35% interest in the Joint Venture. The Applicants further indicated as a result, Pic Mobert First Nation now holds its 35% interest in the joint venture indirectly via GAELP. The February 25th letter further noted that this was not a change in control of the Joint Venture, given that Pic Mobert First Nation only holds a 35% interest, whether directly or indirectly through GAELP.
 7. The Board reviewed the February 25th letter and determined that the change in the ownership structure did not require that the Applicants publish and serve a new Notice of Application and Written Hearing given that the issues expected to be raised in this proceeding would not be impacted by the noted change in the ownership interest of the Pic Mobert First Nation or of the creation of GAELP. For accuracy, the Applicants in this case have since been referred to as White River Hydro LP and GAELP.
 8. On February 28, 2012, the Board received a letter from PRFN, asking for extension of the deadline for interrogatory submission to March 12 from the existing deadline of March 5 as stated in Procedural Order No.1. The stated reason for the requested extension was to allow for discussions to address outstanding issues between the Applicants and PRFN.
 9. On February 29, 2012, the Board received a letter from the Applicants opposing the February 28 request by PRFN and stating that PRFN should not be permitted to delay

¹ EB-2011-0420, Application (the “Application”) dated December 6, 2011, at par. 9.

these proceedings in order to accommodate negotiation timelines on issues outside of the scope of the leave to construct. The Board issued Procedural Order No. 2 on March 2, 2012, in which it held that it could not decide on issues that were outside of the proceeding and granting the delay requested by PRFN. Procedural Order No. 2 also established the timelines for interrogatories and final submissions by the parties.

10. On March 9, 2012, PRFN sent a letter to the Board indicating that discussions between the Applicants and PRFN had been productive and requesting that the Board accept PRFN's withdrawal as intervenor in this proceeding. The Board acknowledged and accepted PRFN's request for withdrawal on March 13, 2012.
11. Board staff submitted interrogatories and the Applicant provided responses by the specified date. No other party submitted interrogatories, and no intervenor evidence was submitted.

Board jurisdiction in Section 92 proceedings

12. Section 96(2) of the OEB Act provides that for an application under section 92 of the OEB 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.
13. The Board's *Filing Requirements for Transmission and Distribution Applications*, dated November 2006, provide further guidance as to matters that the Board will consider in assessing whether the public interest has been met under section 96(2), including:
 - Land matters, including environmental assessment
 - Community and Stakeholder Consultation
14. As outlined below, the Applicants have demonstrated via their evidence and response to interrogatories that the test under Section 96(2) has been met and that the construction of the Transmission Facility is in the public interest.

Interests of consumers with respect to prices

15. The cost for the Transmission Facility will be borne by the Applicants. The Transmission Facility will not have any adverse impact on the price of electricity in the wholesale market or on transmission rates.²

Interests of consumers with respect to reliability and quality of electricity

16. A single system impact assessment ("SIA") was performed for both the Bezbig and Niizh Facilities as they are interconnected to the common Transmission Line at the Bezbig

² EB-2011-0420, Applicant's Response to Board Staff Interrogatories ("Applicant IRRs"), dated March 20, 2012, interrogatory response ("IRR") 5(iii).

Facility, which is connected to the M2W Circuit. The SIA found that the connection of the Hydro Facilities via the Transmission Facility will not result in a material adverse effect on the reliability of the IESO-controlled grid.³

17. A single customer impact assessment (“**CIA**”) was performed by Hydro One for the Hydro Facilities. The CIA noted that the Hydro Facilities are connected to the M2W Circuit at a point of common coupling protected by a single high voltage 115 kV breaker. Consequently, the connection of the Hydro Facilities does not expose the existing Hydro One customers to increased interruptions or diminish the reliability and performance of supply. The CIA further concluded that the Hydro Facilities will not adversely affect transmission customers from the load flow or short circuit perspective. The draft CIA was provided to all of the affected transmission customers in the area and no comments were received within the provided review period.⁴
18. Board staff requested in their interrogatories dated March 12, 2012 that Hydro One clarify certain minor items in the CIA. Hydro One provided its response to the Applicants, which response was filed with the Board on March 22, 2012. There were no further questions from Board staff.
19. The Applicant confirms that all of the recommendations listed in the SIA reports and CIA will be met prior to connecting the Transmission Facility to the IESO-controlled grid.

Promotion of use of renewable energy sources in a manner that is consistent with the policies of the Government of Ontario

20. The Transmission Facility will connect two renewable generation facilities, being the Bezbig Facility and the Niizh Facility. As noted above, the Hydro Facilities have each been awarded a power purchase agreement under Ontario’s Feed-in-tariff Program, which program is in place to promote the development of renewable electricity generation in the province.
21. The existing White Lake Dam (currently owned and operated by the Ministry of Natural Resources (“**MNR**”)) will be decommissioned as part of the Project, and the function of lake level and flood control will be carried out by the new Bezbig Facility. The installation of the new modern control structure will provide for more effective and consistent control of water levels on White Lake and flows along the White River with the added advantage of lowering the potential for flooding within the built areas of White Lake Provincial Park, within the Pic Mobert community and along the course of the White River.
22. The Project is also the first major commercial undertaking for the Pic Mobert First Nation. Revenue from the Project will positively impact various social development initiatives being considered by the community in its move toward self sufficiency. The participation of Pic Mobert First Nation in the Project supports the Ontario government’s

³ Application, at par. 53.

⁴ Application, at par. 55.

policy to promote the participation of First Nations and Métis communities in renewable energy development.

Land Matters

23. Section 97 of the Act requires that the Board be satisfied that the Applicants have offered or will offer each landowner affected by the proposed route or location an agreement in a form approved by the Board.
24. The lands (the **"Facility Lands"**) upon which the Transmission Facility will be built are entirely Crown lands, with the exception of a small portion of land that is privately owned by Canadian Pacific Rail (**"CP Rail"**), for which a crossing has been obtained. In addition to being Crown lands, the Facility Lands are also provincial park lands. The Applicants have obtained all necessary permits and approvals for the development of the Project within provincial park lands.⁵ The Applicants submitted a form Crown lease as well as a form of Crown easement for the Board's review although, generally speaking, it is acknowledged that the Board does not have jurisdiction over leases or easements that are entered into with the Crown.
25. The Project, including the Transmission Facility, is subject to the environmental screening process for hydro electric projects prescribed by *Ontario Regulation 116/01, Electricity Project Regulation* (the **"Regulation"**). A Project Information Report (**"PIR"**) for the Project was prepared and submitted pursuant to the Regulation. The public/agency review period ended on November 5, 2010 without any elevation requests being received. A statement of completion was subsequently filed with the Ministry of Environment (**"MOE"**). Following the filing of the Statement of Completion, the Applicants decided to consider a minor modification (the **"Modification"**) to the Transmission Line routing. Only the Niizh Portion was altered in the Modification, and is the route proposed in this Application that follows the Forest Service Roads.⁶
26. The Applicants discussed the Modification with MNR and MOE prior to proceeding. Both MNR and MOE confirmed that the Modification would not require a formal amendment to the PIR, but requested that the Applicants complete a written screening report outlining the change. The resulting document is the 'Addendum Provision Determination of Proposed New Transmission Line Route Using an Aggregate Approach', (the **"Addendum Report"**), which was submitted to all relevant regulating agencies in April 2011 and, after comments from such agencies (there were none), finalized on May 20, 2011.⁷ The Addendum report concluded, among other things, that (i) the new proposed route is considered an improvement over the previous one by the MNR, Ontario Parks, the Service Forest Licence holder (being White River Forest Products Ltd.) and the technical review personnel of the Applicants, and (ii) the potential negative impacts

⁵ Application, at par. 12.

⁶ Application, at par. 30.

⁷ Applicant's IRRs, interrogatory response ("IRR") 2(i).

identified through the completion of the criteria checklist are all significantly less than the similar impacts associated with the previously presented preferred route.⁸

27. In response to Board staff interrogatories concerning approval by the MOE of the Modification, the Applicants clarified that the MOE has the ability to request that a proponent issue a formal amendment to the project information report if there is a material change to the proposed project, which would require the proponent to undertake public consultations on the amended project and submit a new Statement of Completion. In discussions with the Applicants, the MOE deemed the proposed change to the Transmission Line route to be a minor modification and chose not to exercise their discretion in this instance to require a new Statement of Completion. Rather, the Applicants were required to issue the Addendum Report.⁹
28. As mentioned in paragraph 25 the Modification is such that the Niizh Portion (as defined in the Application) of the Transmission Line will traverse the Forest Service Roads. The Forest Service Roads are owned by MNR, and have been licensed to White River Forest Products Ltd.¹⁰ The Joint Venture has entered into a road use agreement (the "**Road Use Agreement**") dated March 26, 2010, pursuant to which the Applicants are permitted to use the Forest Service Roads for the purposes of developing, constructing and operating the Project in exchange for covering a certain portion of the maintenance services fees.¹¹ An amendment to the Road Use Agreement was entered into between the Applicants and the White River Forest Products Ltd. on January 23, 2012 which, among other amendments not related to this Application, specified that the Transmission Line will be built along the right of way in such a way as not to interfere with White River Forest Products Ltd.'s forest operations.¹² In any event, as stated in the Application, White River Forest Products Ltd. does not have a veto over the Applicants' use of the Forest Service Roads, since these rights are granted to the Applicants by MNR via the Crown Easement.¹³

Community, stakeholder and Aboriginal consultation

29. Public, agency and stakeholder consultation was an integral component of the environmental assessment process for the Project, which environmental assessment process includes review of the Transmission Facility. Consultation regarding key components of the Project's planning and development activities was carried out through direct mailings, newspaper ads, and several public open houses.
30. As stated above, the public consultation process for the environmental assessment was carried out prior to the implementation of the Modification. Based on MOE's direction that further public consultation was not required regarding the Modification (which

⁸ Application, at par. 34.

⁹ *Ibid.*

¹⁰ Application, at par. 45.

¹¹ Application, at par. 45.

¹² Applicant's IRRs, IRR 3(i).

¹³ Application, at par. 46.

reduced overall impact of the Transmission Facility on the natural environment), the Applicants did not carry out formal consultation with the public. As noted above however, in addition to MOE, MNR, Ontario Parks and White River Forest Products Ltd. were also consulted with prior to proceeding with the Modification.

31. The Applicants also made several attempts to consult with PRFN regarding the Modification. In their request for intervention dated February 9, 2012, PRFN stated that no discussions between the Applicants and PRFN took place regarding the Modification. In response to this claim, the Applicants filed a letter dated February 22, 2012 with the Board evidencing that the information regarding the Modification and been provided to PRFN and that PRFN had been offered an opportunity to raise any issues, to which they did not respond. Details of further consultation attempts by the Applicants with PRFN and MNR's approval that consultation was complete were also provided in the February 22 letter.
32. In a letter to the Board dated March 9, 2012, PRFN withdrew as an intervenor from this proceeding, stating that the matters giving rise to PRFN's intervention had been resolved.

Order Requested

33. Based on the foregoing, the Applicants submit that approval of the Transmission Facility is within the public interest, and that the price, reliability and quality of electricity will be maintained. Particularly, the approval of the Transmission Facility, its sole use being to connect the Project and which is being developed in part by Pic Mobert First Nation, is consistent with the promotion of the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario.
34. The Applicants therefore request that the Board approve this application as proposed by the Applicants in these submissions.

All of which is respectfully submitted.

White River Hydro LP and Gitche Animki
Energy Limited Partnership, by its counsel,
McCarthy Tétrault LLP

Per: *signed in the original*

Kristyn Annis