



EB-2011-0420

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 White River
Hydro LP and Gitchi Animki Energy Limited Partnership as
joint venture partners for an Order granting leave to
construct a new transmission line and associated facilities
to connect two hydroelectric generating sites to the
provincial transmission system.

BEFORE: Paul Sommerville
Presiding Member

Ken Quesnelle
Member

DECISION AND ORDER
May 10, 2012

DECISION

For reasons that follow in this decision the Board approves the application by White River Hydro LP and Gitchi Animki Energy Limited Partnership as joint venture partners for an Order granting leave to construct the transmission line and associated facilities as described in the December 6, 2011 application. This approval is subject to certain conditions which are attached to and form part of this Decision and Order.

APPLICATION AND PROCEEDING

White River Hydro LP and Gitchi Animki Energy Limited Partnership¹ (the “Applicants”) have filed an application with the Ontario Energy Board (the “Board”) dated December 6, 2011 under sections 92 and 96(2) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the “Act”). The Applicants have applied for an order of the Board granting leave to construct an electricity transmission line as described below in item (i) and related facilities (“Transmission Facilities”), as described in items (ii), (iii) and (iv):

- (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 Niiz Facility and the Bezbig Facility) on White River, to the Independent Electricity System Operator-controlled grid. The Transmission Line will begin at the downstream Niiz Facility, connect the Bezbig Facility and terminate at the interconnection point with Hydro One Networks’ (“Hydro One”) M2W 115 kV circuit;
- (ii) A switching station located adjacent to the M2W circuit;
- (iii) A switchyard located adjacent to the Niiz Facility powerhouse that will connect the Niiz 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.

The Transmission Line and Transmission Facilities were proposed to be located near the community of Pic Mobert and the Town of White River.

The Application has been assigned Board File No. EB-2011-0420.

¹ On February 25, 2012, the Applicants advised the Board that on December 7, 2011 Pic Mobert First Nation formed Gitchi Animki Energy Limited Partnership (“GAELP”) and transferred its 35% interest in the Joint Venture. As a result, Pic Mobert First Nation, originally an applicant, holds its 35% interest in the Joint Venture indirectly via GAELP.

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").

The Board issued Procedural Order No. 1 on February 23, 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.

On February 28, 2012, the Board received a letter from Carol L. Godby, counsel for PRFN, asking for an extension of the deadline for interrogatory submission to March 12 from the existing deadline of March 5 as stated in Procedural Order No.1, to allow for discussions to address outstanding issues between the Applicant and PRFN.

On March 2, 2012, the Board issued Procedural Order No. 2 granting approval for the requested extension, and revised the deadlines for the remaining procedural steps in Procedural Order No.1.

On March 9, counsel for PRFN filed a letter with the Board indicating that a settlement was reached with the Applicants, and requesting that the Board accept PRFN's withdrawal as an intervenor in this proceeding. On March 13, the Board approved PRFN's request.

On March 20, the Applicants filed responses to Board staff interrogatories as directed in Procedural Order No.2, and indicated that Hydro One Networks Inc. was asked to respond to interrogatory No. 7, which it did on March 22 by way of an email sent to the office of the Board Secretary.

On March 26, the Applicants filed the Argument in Chief and submitted² that approval of the Transmission Facility is in the public interest, and that price, reliability and quality of electricity will be maintained.

The Applicants further submitted that the approval of the Transmission Facility, its sole use being to connect the Project and which is being developed in part by Pic Mobert

² Applicants' Argument in Chief, February 26, 2011, paragraphs 33 & 34, page 7.

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.

The Applicants therefore requested that the Board approve this application as proposed by the Applicants.

Board staff filed its submission on March 30 indicating that the Applicants' pre-filed evidence and the answers given to all the interrogatories clarifying key aspects of the Application, had shown that the construction of the transmission line is in the public interest. Board staff further submitted that the Applicants have shown that the proposed project meets the test articulated in section 96(2) of the Act; in particular, that the construction of the line is in the interests of consumers with respect to prices and the reliability and quality of electricity service, and is consistent with the promotion of the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario.

In a letter filed with the Board on April 5, the Applicants indicated that no one other than Board staff filed submissions and that the Applicants would not be filing reply submissions.

THE PUBLIC INTEREST TEST

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

- the interests of consumers with respect to 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 of the use of renewable energy sources.

The Board notes that the evidence³ indicates that the Applicants will pay for the total cost of the proposed 23.5 km 115 kV transmission line, the two switchyards and the

³ Applicants Response to Board staff Interrogatory 5, filed March 20, 2012, page 4.

switching station to connect to the M2W circuit owned by Hydro One Networks Inc. Consequently, provincial transmission rates will not be impacted.

The Board also notes that the proposed transmission facilities are needed to connect two renewable hydroelectric generation facilities, being the Behzig Facility and the Niizh Facility, and that each has been awarded a power purchase agreement under Ontario's Feed-in-tariff Program. Subject to conformity with all conditions of approval, the Board is of the view that construction of this project would be consistent with the policies of the Government of Ontario, as it would promote the use of renewable energy sources.

EVIDENCE AND BOARD FINDINGS

Interests of Consumers in respect of Reliability and Quality of Electricity Service

The Board notes that the IESO's system impact assessment ("SIA") report,⁴ which took into account both the Behzig and Niizh hydroelectric facilities totaling 20 MW capacity, indicated that there are no material negative impacts on the reliability of the IESO-controlled grid.

The Board also notes that the customer impact assessment ("CIA") study was performed by Hydro One taking into account both the Behzig and Niizh hydroelectric facilities totaling 20 MW capacity.⁵ The CIA study indicated that the two hydroelectric facilities are connected to the Hydro One owned 115 kV M2W circuit through a single high voltage breaker and through a single line tap.⁶ This arrangement will reduce the risk of increased interruptions without diminution of the reliability and performance of supply to existing Hydro One customers. The CIA study concluded⁷ that after conducting load flow and short circuit analyses of the system, the simulation results confirm that incorporating the two proposed hydroelectric generation projects into Hydro One's transmission system at the proposed location will not cause any adverse impact on the system and customers.

⁴ Exh. B/Tab 4/Sch. 2/pp. 6-11/FinalSystem Assessment Report, February 28, 2011.

⁵ Exh. B/Tab 4/Sch. 3/Customer Impact Assessment ("CIA"), February 10, 2011.

⁶ Ibid, page 5, section 2.1 Scope of the Study.

⁷ Ibid, page 11, section 8.0.

The Applicants further confirmed⁸ 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.

The Board accepts the evidence of the SIA and CIA reports which conclude that the proposed project will not have a negative impact on the reliability of the IESO-controlled grid or service to other Hydro One transmission customers. The Board acknowledges the Applicants commitment to meet the requirements and recommendations of the SIA and CIA, and this is reflected in the Conditions of Approval.

Land Matters

Form of Easement Agreement

The Board notes that the Applicants' evidence indicates that the 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, for which crossing permission has been obtained. In addition to being Crown lands, the affected lands are also provincial park lands. The evidence also indicates that the Applicants have obtained all necessary permits and approvals for the development of the Project within provincial park lands.⁹ The Applicants submitted a form Crown lease as well as a form of Crown easement for the Board's review.

The Board is satisfied the Applicants have met the requirement of section 97 of the Act with respect to offering landowners affected by the proposed route or location an agreement in a form that is satisfactory to the Board, and is accordingly approved by the Board.

Environmental Assessment and Approval of Minor Route Modification

The Board notes that the Applicants' pre-filed evidence indicated that¹⁰ 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*

⁸ Argument In Chief, March 26, 2012. paragraph 19.

⁹ Application, at par. 12.

¹⁰ Exh. B/Tab 1/Sch. 5/p.1/parahraph 30.

Regulation. The Applicants further clarified in their Argument in Chief¹¹ that 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. Following the filing of the Statement of Completion, the Applicants decided to consider a minor modification to the Transmission Line routing. Only the Niizh Portion was altered in the Modification, and that is the route proposed in this Application which follows the Forest Service Roads.¹²

The Board notes that the evidence provided by the Applicants¹³ during the discovery phase indicates that both the Ministry of Natural Resources (“MNR”) and the Ministry of Environment (“MOE”) confirmed that the minor modification in the Transmission Line route i.e., the “Niizh Portion”, would only require a formal amendment to the Project Information Report/Environmental Screening Review Report (“PIR”). This evidence also indicated that the MOE did not require the Applicants to issue a formal amendment to the PIR which would have required the Applicants to undertake public consultations on the amended project. The noted evidence included the Addendum Report¹⁴ which was submitted for the PIR, an email to Laurie Brown of the MOE¹⁵ evidencing that the MOE was aware of the noted change in the route, and a copy of the relevant excerpts of the PIR report.¹⁶

Based on the clarifications and evidence during the discovery phase noted above, the Board is satisfied that the route now proposed has been approved by the MOE.

Acceptance of the Revised Minor Route Modification by the Sustainable Forest Licence holder for the White River Forest

The Board notes that during the discovery phase the Applicants confirmed¹⁷ that White River Forest Products Limited, the Sustainable Forest Licence (“SFL”) holder for the White River Forest, has no objection to the use of the Forest Services Road Right Of Way (ROW) for the Transmission Line.

¹¹ Argument In Chief, March 26, 2012/p.5/paragraph 25.

¹² Exh. B/Tab 1/Sch. 5/p.1/paragraph 30.

¹³ Applicants Response to Board staff Interrogatory 2, filed March 20, 2012, pages 1 -2 , questions (i) and (ii).

¹⁴ Ibid, Schedule ‘A’ – ADDENDUM REPORT , submitted for the PIR.

¹⁵ Ibid, Schedule ‘B’ – EMAIL TO MOE RE ADDENDUM REPORT.

¹⁶ Ibid, Schedule ‘C’ – EXCERPT FROM PIR.

¹⁷ Applicants Response to Board staff Interrogatory 3, filed March 20, 2012, pages 2 -3

The Board also notes the Applicants' further clarification in the Argument In Chief,¹⁸ where it is indicated that the Forest Service Roads are owned by MNR, and have been licensed to White River Forest Products Ltd.¹⁹ The Road Use Agreement permits the Joint Venture to use the Forest Service Roads for developing, constructing and operating the Project. Further, an amendment to the Road Use Agreement was entered into between the Applicants and the SFL holder on January 23, 2012 which also specified that the Transmission Line would be built along the ROW in such a way as not to interfere with the SFL holder's forest operations.

THE BOARD ORDERS THAT:

1. Pursuant to section 92 of Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B, White River Hydro LP and Gitchi Animki Energy Limited Partnership as joint venture partners are granted leave to construct an electricity transmission line and related facilities ("Transmission Facilities"), as described in the Application at paragraph 10 and in accordance with the contents of this Decision and Order, and subject to the Conditions of Approval attached as Appendix A to this Order.
2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, White River Hydro LP and Gitchi Animki Energy Limited Partnership as joint venture partners shall pay the Board's costs of the proceeding immediately upon receipt of the Board's invoice.

ISSUED at Toronto on May 10, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

¹⁸ Argument in Chief, March 26, 2012/p. 6/paragraph 28

¹⁹ Exh. B/Tab 3/Sch. 1/p.1/paragraph 45

APPENDIX A

CONDITIONS OF APPROVAL

**White River Hydro LP and Gitchi Animki Energy Limited
Transmission Line and Associated Transmission Facilities (the “Project”)**

**Decision and Order
Board File NO. EB-2011-0420
Dated May 10, 2012**

Definitions:

- (1) “Project” means the Transmission Line and associated Transmission Facilities as defined in the Decision and Order.**
- (2) “Applicants” means White River Hydro LP and Gitchi Animki Energy Limited.**

1 General Requirements

- 1.1 The Applicants shall construct the Project and restore the Project land in accordance with the Leave to Construct application, evidence and undertakings, 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 June 30, 2013 unless construction of the Project has commenced prior to that date.
- 1.3 The Applicants shall comply with the requirements of the Environmental Assessment Approval and any amendment thereto.
- 1.4 The Applicants shall satisfy the Independent Electricity System Operator (“IESO”) requirements as reflected in the System Impact Assessment Report dated February 28, 2011, and such further and other conditions which may be imposed by the IESO.
- 1.5 The Applicants shall satisfy the Hydro One Networks Inc. requirements as reflected in the Customer Impact Assessment Report dated February 10, 2011.
- 1.6 The Applicants 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, construction techniques, construction schedule, restoration procedures, or any other material impacts of construction. The Applicants shall not make a material change without prior approval of the Board or its designated representative. In the event of an emergency the Board shall be informed immediately after the fact.
- 1.7 The Applicants shall obtain and comply with 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 Project and Communications Requirements

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Electricity Facilities and Infrastructure Applications.
- 2.2 The Applicants shall designate a person as Project Manager and shall provide the name of the individual to the Board's designated representative. The Project Manager will be responsible for the fulfillment of the Conditions of Approval on the construction site. The Applicants shall provide a copy of the Order and Conditions of Approval to the Project Manager, within ten (30) days of the Board's Order being issued.
- 2.3 The Applicants shall develop, as soon as possible and prior to the start of construction, a detailed construction plan. The detailed construction plan shall cover all material construction activities. The Applicants 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. The Applicants shall give the Board's designated representative ten (10) days written notice in advance of the commencement of construction.
- 2.4 The Applicants 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.
- 2.5 The Applicants shall, in conjunction with Hydro One and the IESO, and other parties as required, develop an outage plan for the construction period which shall detail how proposed outages will be managed.
- 2.6 The Applicants 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.

3 Construction Impacts - Reporting Requirements

- 3.1 Both during and for a period of twelve (12) months after the completion of construction of the Project, the Applicants shall maintain a log of all comments and complaints related to construction of the Project. The log shall record the person making the comment or complaint, the time the comment or complaint was received, the substance of each comment or complaint, the actions taken in response to each if any, and the reasons underlying such actions. The Applicants shall file two (2) copies of the log with the Board within fifteen (15) months of the completion of construction of the Project.

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