



EB-2012-0235

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF a proceeding under section
19(4) and section 57 of the *Ontario Energy Board Act*,
1998 to determine whether Grand Renewable Wind
Limited Partnership requires an electricity transmission
licence.

BEFORE: Paula Conboy
Presiding Member

Ken Quesnelle
Member

DECISION JULY 5, 2012

Background

On May 8, 2012 the Board commenced a proceeding on its own motion under section 19(4) and section 57 of the *Ontario Energy Board Act*, 1998 (the "Act") to determine whether Grand Renewable Wind Limited Partnership ("GRWLP") is exempt from holding an electricity transmission licence pursuant to section 4.0.2(1)(d)(i) of Ontario Regulation 161/99 ("O.Reg. 161/99").

On February 24, 2012, GRWLP filed a Notice of Proposal under section 81 of the Act. In that Notice of Proposal GRWLP indicated that it relied on the Board's approval of the Notice of Proposal as confirmation that GRWLP was exempt from having to obtain an electricity transmission licence. On April 19, 2012, the Board indicated by letter that it intended to issue a Notice of Review for the proposal. On May 4, 2012 the Board

issued a Decision and Order approving the section 81 Notice of Proposal. In that Decision and Order, the Board determined that a section 81 proceeding was not the appropriate forum to consider the issue of whether or not GRWLP is exempt from holding an electricity transmission licence, and indicated that it would commence a proceeding on its own motion under section 19(4) and 57 of the Act to address the issue.

GRWLP was established for the purpose of developing, constructing, and operating a 153 MW wind generating facility (the "Wind Project"). Grand Renewable Solar LP ("GRSLP"), a related company, was established for the purpose of developing, constructing and operating a 100 MW solar generating facility (the "Solar Project"). In addition to the Wind Project, GRWLP intends to own and operate the interconnection facilities (the "Transmission Facility") used to connect both the Wind Project and the Solar Project to the IESO controlled grid. The Transmission Facility is located in Haldimand County on a Municipal right-of-way passage, parts of which already accommodate the electrical distribution system owned and operated by Haldimand County Hydro Inc. The Transmission Facility was subject to a leave to construct application with the Board that was approved with conditions through the Board's Decision and Order dated December 8, 2011 (EB-2011-0063).

Both GRWLP and GRSLP have stated that they intend to apply for electricity generation licences with the Board in due course. GRWLP maintains it does not require an electricity transmission licence for the Transmission Facility pursuant to an exemption under section 4.0.2(1)(d)(i) of O.Reg 161/99. The Board heard argument on the licence exemption issue in the EB-2011-0063 proceeding. Board staff argued that it was not clear that GRWLP is in fact entitled to the exemption in O. Reg. 161/99 and had concerns over access to the Transmission Facility. Ultimately the Board determined that it did not need to make a determination on that issue in the EB-2011-0063 proceeding, and that the issue could be addressed at a later date.

The Issue in this Proceeding

The issue that the Board had to determine in this proceeding is as follows:

1. Is GRWLP exempt from holding an electricity transmission licence with respect to its intention to transmit electricity generated by both the Wind Project and the

Solar Project to the IESO controlled grid through its Transmission Facility, pursuant to section 4.0.2(1)(d)(i) of O. Reg. 161/99?

The complete relevant section of O. Reg. 161/99 is as follows:

4.0.2 (1) *Clause 57 (b) of the Act and the other provisions of the Act listed in subsection (2) do not apply to a transmitter that transmits electricity for a price, if any, that is no greater than that required to recover all reasonable costs if,*

(a) the transmitter owns or operates a transmission system that is entirely or partially located on land on which one or more of the types of buildings or facilities described in subsection 4.0.1 (1) is also located;

(b) the transmission system owned or operated by the transmitter was in existence on January 1, 2002 and, since that day has been used, if at all, for the sole purpose of permitting another person that holds a licence authorizing the other person to own or operate a transmission system to convey electricity from the IESO-controlled grid to consumers;

(c) the transmitter is a consumer and transmits electricity only for,
(i) the purpose of using it for the transmitter's own consumption, or
(ii) the purpose described in clause (b), if the transmission system owned or operated by the transmitter was in existence on January 1, 2002 and, since that day, has been used, if at all, for the sole purpose described in clause (b);

(d) the transmitter is a generator and transmits electricity only for,
(i) the purpose of conveying it into the IESO-controlled grid,
(ii) the purpose of transmitting electricity during,
(A) planned outages as defined in the market rules that have been approved by the IESO in accordance with the market rules,
(B) forced outages as defined in the market rules, or
(C) emergencies as defined in the market rules, or
(iii) the purpose described in clause (b), if the transmission system owned or operated by the transmitter was in existence on January 1, 2002 and, since that day has been used, if at all, solely for the purposes described in clause (e)

(e) the transmitter is a consumer and a generator and transmits electricity only for,
(i) the purpose described in subclause (c) (i),
(ii) the purpose described in subclause (d) (i) or (ii), or

(iii) the purpose described in clause (b), if the transmission system owned or operated by the transmitter was in existence on January 1, 2002 and, since that day, has been used, if at all, for the sole purpose described in clause (b).

The Proceeding

To commence the proceeding the Board issued a Notice of Application and Procedural Order No. 1 on May 8, 2012 giving time for GRWLP to file an argument in chief as well for parties to file argument and for GRWLP to file a reply argument. On May 17, 2012, GRWLP filed its argument in chief with the Board. On May 31, 2012 Board staff and NextEra Energy Canada, ULC ("NextEra") each filed a submission on the issue in this proceeding. GRWLP filed its reply submission on June 14, 2012.

Submissions

While the Board has considered the full record, the Board has summarized and referred to those portions of the record that it considers necessary to provide context to its findings.

Prior to submitting its argument in chief GRWLP confirmed that the evidence relating to the physical configuration of Wind Project and the Solar Project in relation to the Transmission Facility, and the legal relationship between GRWLP and GRSLP, as filed in the EB-2011-0063 proceeding remained accurate. GRWLP submitted in its argument in chief that it was exempt from the need for an electricity transmission licence under section 4.0.2(1)(d)(i) of O.Reg. 161/99. GRWLP stated that it fell under the exemption because it is transmitting only its own power and the power of its related company, GRSLP, at cost. GRWLP submitted that it is Board policy to treat related companies as having common interests with each other. GRWLP indicated that the electricity supply of GRSLP can, for regulatory purposes, be considered the electricity supply of GRWLP. GRWLP submitted that it falls under three conditions that must be in place for s. 4.0.2(1)(d)(i) to apply:

- The transmitter is a generator;
- The transmitter charges no more than the recovery of its costs; and
- The transmitter only transmits electricity for the purpose of conveying it to the IESO-controlled grid.

In its submission, NextEra stated that GRWLP is, and should be found to be, exempt from the requirement to hold an electricity transmission licence pursuant to section 4.0.2(1)(d)(i) of O.Reg. 161/99. NextEra indicated that the consideration of the words in the exemption in O.Reg. 161/99 in their grammatical and ordinary sense within the context of the regulatory scheme for transmission licensing, as well as the relevant policy considerations and the objectives of the legislature, find that GRWLP should be exempt from having to obtain an electricity transmission licence. NextEra also stated that the interpretations proposed by Board staff in its submission in the leave to construct proceeding (EB-2011-0063) are not supported by the words of O.Reg 161/99 and give rise to an internally inconsistent result. NextEra indicated that the noted three conditions for the exemption to apply are met by GRWLP.

In its submission, Board staff disagreed with GRWLP's submission that it was exempt from having to obtain an electricity transmission licence. Board staff reiterated its position from the leave to construct proceeding and stated that contrary to the suggestion of GRWLP in its argument in chief, Board staff did question the literal conclusion that the term "it" referred to electricity without reference to who generated the electricity. Board staff submitted that "it" could be referring to either electricity generally, or electricity produced by the generator specifically. If "it" referred to the transmission of electricity generally, Board staff submitted that it appears that any generator in the province could build a transmission line anywhere and be exempt from licensing (provided it charged other parties using the line prices not in excess of its costs). Board staff indicated that the term "it" is used in 4.0.2(1)(d)(i) while the term "electricity" is used in 4.0.2 (1)(d)(ii). Board staff submitted that under the principle known as the presumption of consistent expression "it" does not in fact refer to electricity generally in which case it would state "conveying electricity" instead of "conveying it". The term "it" refers to only the electricity that the transmitter has itself generated. Board staff indicated that only if the subsection refers to electricity generally does the exemption apply to GRWLP.

GRWLP filed a reply argument and reiterated its view that it was exempt from the need to obtain an electricity transmission licence. GRWLP responded to Board staff's argument and disagreed with Board staff's interpretation of the text of the exemption provision. GRWLP replied that even if the Board does attribute different meanings to the word "convey electricity", Board staff did not give reasons as to why that difference supports the position that the word "it" refers only to electricity that a generator

generates itself, as opposed to the generation generated by a related company. GRWLP submitted that while there may be a difference in the wording, the difference may be without a meaning and no reasons are offered why this difference supports Board staff's interpretation.

Board Findings

The Board is of the view that the issue in this proceeding is mainly one of interpretation of section 4.0.2(1)(d) of O. Reg. 161/99 as it relates to GRWLP.

The Board agrees with GRWLP and NextEra that three conditions must apply for GRWLP to be eligible for the exemption under O.Reg. 161/99. These conditions are:

1. Be transmitting electricity either for no price, or for a price that is no greater than that required to recover all reasonable costs.
2. In transmitting electricity, also be an electricity generator, as set out in subsection 4.0.2(1)(d).
3. Be transmitting electricity only for the purpose of conveying it into the IESO-controlled grid, as set out in subsection 4.0.2(1)(d)(i).

In the Board's view the wording under No. 1 clearly contemplates that a transmitter (in this case GRWLP) would be not only conveying electricity to the IESO-controlled grid on their own behalf, but also potentially that GRWLP is conveying electricity to the IESO-controlled grid that has been generated by a third party at that third party's generating facility, (in this case GRSLP). A transmitter does not charge a price to itself but to another party. GRWLP intends to be a licensed generator under the Act, although a licence application has not yet been received by the Board. There is no dispute that GRWLP and GRSLP will require generation licences. The Board finds that the act of transmitting electricity is not restricted to the transmission of electricity on GRWLP's own behalf. The term "it" refers to electricity, without reference as to who generated the electricity. The Board also finds that the terms "transmit" and "to convey electricity at voltages of more than 50 kilovolts" can be used interchangeably in this proceeding.

The Board agrees that under the proposed arrangements GRWLP and not GRSLP would be the transmission customer of Hydro One and therefore only GRWLP would be party to the Connection Agreement with Hydro One as per Hydro One's obligations

under the Transmission System Code. The Customer Impact Assessments and System Impact Assessments did not raise any concerns with the configuration. GRWLP and GRSLP as the only parties to the arrangement do not see this as an issue (i.e. GRSLP connecting to GRWLP's transmission facilities).

The Board finds that GRWLP is exempt from the need to apply for an electricity transmission licence pursuant to section 4.0.2(1)(d)(i) of Ontario Regulation 161/99 - Definitions and Exemptions.

DATED at Toronto, July 5, 2012

ONTARIO ENERGY BOARD

Original Signed By

Paula Conboy
Presiding Member

Original Signed By

Ken Quesnelle
Member