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BY COURIER

April 19, 2013

Ms. Kirsten Walli
Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
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Dear Ms. Walli

EB-2012-0442 - Varna Wind Inc., Section 92 Leave to Construct:

Hydro One Networks' Response to Varna's Motion To Strike Hydro One's Evidence

In accordance with the Board's Procedural Order 3, I am attaching two (2) paper copies of Hydro One Networks' submission in the above-mentioned proceeding.

An electronic copy of this notice has been filed using the Board's Regulatory Electronic Submission System.

Sincerely,

ORIGINAL SIGNED BY SUSAN FRANK

Susan Frank

c – Intervenors (Electronic Only)

**EB-2012-0442 VARNA WIND INC. LEAVE TO CONSTRUCT APPLICATION
HYDRO ONE NETWORKS INC. SUBMISSION RESPECTING
VARNA'S MOTION TO STRIKE HYDRO ONE EVIDENCE**

This submission is in response to Varna Wind Inc.'s ("Varna") April 10, 2013, motion to the Board to strike the evidence of Hydro One Networks Inc. ("Hydro One"). Varna's position is that Hydro One's evidence is not relevant to this proceeding as it:

- addresses matters beyond the scope of this proceeding; and
- requests relief (in the form of amendments to the Transmission System Code and Distribution System Code) that the panel does not have authority to address.

Hydro One hereby defends against Varna's motion and asks that the motion be dismissed on the grounds that the Board's jurisdictional scope in s. 92 proceedings is more than sufficient to address Hydro One's issues and that Hydro One's evidence falls well within the criteria established by the Board for assessing the impact of projects which are the subject of s. 92 applications. Hydro One also notes that in making its case for striking Hydro One's evidence, Varna has misrepresented parts of Hydro One's evidence and has misconstrued Hydro One's intent.

Varna's Misrepresentation of Hydro One's Evidence

Varna's statement that Hydro One has asked this panel to amend the Transmission System Code and Distribution System Code is incorrect. Hydro One has made no such request. Hydro One's evidence simply notes the various rules which guide the interactions between utilities and generator-transmitters and concludes that no existing mechanism compels the generator-transmitter to come to a reasonable cost-sharing agreement with electricity distributors whose systems and customers are impacted by the proposed transmission lines.

Varna has also mischaracterized Hydro One's evidence related to the current state of negotiations between the two parties. The purpose of Hydro One's evidence on this subject is not to ask the Board to rule on the negotiations, but rather to correct the record left by Varna in its response to the Board's Interrogatory 7a, which states, "Hydro One has not expressed concerns regarding the location of this Facility on the opposite side of the road of existing distribution lines." As stated on page 2 of its evidence ("Submission," second paragraph), Hydro One had expressed concerns about its issues during meetings and conference calls. These concerns are listed under "Business Impacts" (page 2) of Hydro One's evidence. A second purpose of Hydro One's comments on the negotiations in the evidence, is to note that despite good-faith negotiations between Hydro One and Varna, no agreement had been reached and that, absent an agreement, there are no simple regulatory mechanisms to address Hydro One's concerns, apart from this s. 92 proceeding.

The Board's Criteria and Hydro One's Evidence on Immediate Impacts

Under s. 96 of the *Ontario Energy Board Act, 1998*, the Board, in deciding whether such projects are in the public interest, must consider the “interests of consumers with respect to prices and the reliability and quality of electricity service”. Hydro One submits that the impacts discussed in its evidence are within the scope of these criteria and that the Board must properly consider them. For example, in an emergency involving both sets of wires, Varna, unlike Hydro One, is not subject to Distribution System Code requirements regarding minimum emergency response times. Therefore, Hydro One's capability to maintain safety or restore its service could be affected by the timeliness or otherwise of Varna's actions, thereby affecting Hydro One and its customers. Furthermore, such operational factors have consequences for electricity costs. Hydro One's evidence notes the incremental costs (both current and future) attendant upon Hydro One's distribution line having to cross Varna's transmission line, either overhead or underground, to provide service to Hydro One's customers. All of these issues directly impact the price, reliability and quality of electricity service and, accordingly, must be considered by the Board.

Hydro One's Evidence on Future Impacts

Varna also requests that the Board strike Hydro One's evidence of future impacts on the basis that the Board had already decided not to hold Grand Renewable Wind LP (“GWRLP”) or Summerhaven Wind LP (“Summerhaven”) accountable for Haldimand County Hydro Inc.'s (“HCHI”) incremental costs of future plans. However, the s. 96 criteria quoted above are silent with respect to whether they apply only to current impacts or also to future impacts. Therefore, Hydro One submits that it is within the Board's scope to deal with future impacts in this proceeding, unless the Board makes a decision not to do so. Furthermore, as Hydro One stated in the Background portion of its evidence, the Board in the Summerhaven case did decide that Summerhaven should bear HCHI's incremental costs for underground road crossings if required, as noted below (emphasis added):

“2.6 With the potential exception, ... environmental permitting requirements. **In the event that environmental permitting requirements imposed on the Applicant result in the construction of the Transmission Line in such a configuration that HCHI is later required to install the 27.6kV circuit underground to achieve compliance with applicable laws, codes and standards, the Applicant will bear the incremental cost of an underground installation.**” (EB-2011-0027, Board Decision and Order, Nov.11, 2011, Appendix A, Conditions of Approval, page 3).

Accordingly, in Hydro One's view it is not correct to submit, as Varna does, that the Board in its Summerhaven Decision does not address future incremental costs. In fact, all of Section 2 of this Appendix in the Board's Summerhaven Decision *does* address future reliability and distribution cost impacts of the transmitter's presence and the need to protect ratepayers or individual customers from bearing them.

Generic Hearing vs. S. 92 Relief

Varna notes that Hydro One, in its previous submissions in the GRWLP case, stated that “a section 92 proceeding is likely not the best place to address ... longer-term issues.” At the time of the GRWLP proceeding, it was Hydro One’s expectation that the policy and/or planning issues being raised by distributors such as HCHI and itself regarding generator-owned transmission lines would be addressed through the Board’s Regional Planning consultation that was then about to begin. That consultation, which is now nearly complete, did not address these issues, leaving the regulatory gap that Hydro One identified. This requires that the Board exercise its jurisdictional scope in this s. 92 proceeding to deal with the specifics of such matters respecting Varna, as it did in the Summerhaven s. 92 Decision. Hydro One is properly before the Board seeking relief on these specifics.

Hydro One, in paragraph 3, page 4 of its evidence, notes that its concerns are not one-time items. Varna responds by discussing HCHI’s request for a generic hearing (which an individual panel assigned to this proceeding is not authorized to initiate), implying that Hydro One has made a similar request. To be clear, Hydro One has *not* requested a generic hearing. Hydro One submits that individual Board panels have proven that they are quite capable of attaching conditions to their approvals of these applications and have done so. Furthermore, the Board Decision on the GRWLP project acknowledges this, stating, “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.” (EB-2011-0063, Board Decision and Order, December 8, 2011, page 4).

Hydro One submits that this s. 92 hearing is precisely the correct and appropriate forum in which to address these specific issues, in that this proceeding’s very purpose is to deal with the impacts of the Varna project on consumer interests respecting electricity price, reliability and quality of service. The “beneficiary pays” principle, under which the party causing an impact is responsible to pay for it, suggests that the s. 92 process, which reviews those impacts, is the appropriate forum in which to address and remedy them. Whether the impacts are incurred now or in the future, and hence whether they fall within the scope of the s. 92 review, is a matter of interpretation and argument to be determined in the hearing itself.

Conclusion

Hydro One submits that its evidence is relevant to this proceeding and that its concerns are well within the scope of this panel’s decision-making authority. Furthermore, given the regulatory gap that Hydro One has identified, this s. 92 hearing is an entirely appropriate forum and in fact, the only forum available for the Board and interveners to identify specific impacts and to hold Varna accountable for them. Hydro One submits that Varna has failed to prove its case for dismissal of Hydro One’s evidence, and that in its attempt to inappropriately narrow the scope of the hearing, Varna has misrepresented Hydro One’s position and intent in certain portions of Hydro One’s evidence.