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April 24, 2013

VIA RESS and Courier

Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto, ON M4P 1E4

Attention: Kirsten Walli
Board Secretary

Dear Ms. Walli:

Re: Varna Wind Inc. Leave to Construct Application
Board File No. EB-2012-0442
Reply Submissions - Motion to Strike Evidence

We are counsel to Varna Wind, Inc. (the "Applicant") in the above-noted proceeding. Please find enclosed the Applicant's Reply Submissions to its Motion to Strike Evidence.

Sincerely,

Signed in the original

George Vegh
Enclosure

ONTARIO ENERGY BOARD

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 Varna Wind, Inc. for an order or orders pursuant to section 92 of the *Ontario Energy Board Act, 1998* granting leave to construct transmission facilities in the Municipalities of Bluewater and Huron East.

Motion to Strike Evidence – Reply Submissions

1. On April 10, 2013, the Applicant Varna Wind, Inc. (the “Applicant”) applied to the Ontario Energy Board (the “OEB” or the “Board”) for orders:
 - (a) striking the evidence filed by Hydro One Networks Inc. (“Hydro One”), the Municipality of Bluewater (“Bluewater”) and the Centennial Hensall Road Group (the “Group”);
 - (b) setting a time for the Applicant to file reply evidence. In this regard, the Applicant proposes to file reply evidence on or before May 8, 2013 and that Board staff and intervenors serve any interrogatories within seven days of the evidence being filed; and
 - (c) such further and other order as counsel may advise and as this Board considers appropriate.
2. This is in reply to the submissions made by Hydro One, Bluewater and the Group.

Submissions of Hydro One

3. Hydro One’s submissions are divided into two parts. The first part relates to Hydro One’s evidence on the immediate and future impacts of the Applicant’s facility on Hydro One’s distribution assets. The second point relates to the proposition that the Board should address the generic transmission planning policy issues that Hydro One is seeking to change. Each is addressed in turn.

Evidence on Current Negotiations

4. Hydro One submits that the Applicant has mischaracterized its evidence related to the current state of negotiations between the two parties. Hydro One asserts that the purpose of its evidence on this subject has been to clarify that it holds concerns regarding the location of the facility on the opposite side of the road from its distribution lines, and to note that “despite good-faith negotiations between Hydro One and Varna, no agreement had been reached...”.
5. Hydro One has therefore provided its perspective on the status of negotiations. However, as submitted in the Applicant’s Motion, it is not helpful for each side to exchange evidence on the status of the negotiations before the Board. Once the negotiations are complete, the Board may then address unsettled issues, if any. Until negotiations are complete, it is not relevant for the Board to consider evidence regarding the status of the negotiations. The Applicant is confident that it will negotiate an arrangement with Hydro One and in light of this, it is premature for the Board to consider evidence on this matter.

Hydro One’s evidence on “Immediate Impacts”

6. Hydro One submits that operational matters and associated incremental costs, both current and future, must be considered by the Board in this proceeding.
7. In response, the Applicant observes that it has worked with Hydro One to develop protocols and procedures for operations and maintenance of the facilities. The Applicant has indicated that it will be responsible for the cost of any direct impacts that its facility causes to the quality or reliability of the electricity service provided by Hydro One and is negotiating with Hydro One on this basis.

Hydro One’s Evidence on Future Impacts

8. As for future impacts, in the Grand Renewable Wind decision (which followed the Summerhaven decision), the Board stated:

“In its assessment of impacts on prices, reliability and quality of electricity service the Board considers it appropriate that GRWLP [the proponent] be responsible to pay for any direct impacts its Project causes to the quality or reliability of the electricity service provided by HCHI’s [the distributor] 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.”¹

¹ Decision and Order granting Leave to Construct to Grand Renewable Wind LP (EB-2011-0063), December 8, 2011, at p. 11 (Emphasis added).

9. Despite this clear and unequivocal statement – which Hydro One appeared to concede in its evidence – Hydro One now states that the Board contradicted itself in light of condition 2.6 in the Summerhaven decision. Condition 2.6 reads as follows:

With the potential exception, due to environmental considerations, of the crossing of the Transmission Line at Concession Rd 4, all road crossings shall be designed and built to provide adequate clearance for the HCHI Upgrades, whether or not the Co-location Option is selected by HCHI. Should issues arise between HCHI and the Applicant regarding the crossing of the Transmission Line at Concession Rd 4, the Applicant and HCHI will cooperate to ensure selection of an acceptable configuration to both parties that meets applicable laws, codes, standards and environmental permitting requirements. In the event that environmental permitting requirement 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.²

10. Thus, condition 2.6 incorporates the possibility of changes due to final environmental permitting requirements; the condition is simply a recognition that at the time of the order approving the leave to construct, the environmental permitting process was not complete. As a result, any impacts to Haldimand County Hydro Inc.'s ("HCHI") distribution system resulting from the final environmental permitting requirements was related to current, not future use of HCHI's distribution systems.
11. Moreover, Hydro One states that "all of Section 2" of Appendix A of the Summerhaven decision addresses "future reliability and distribution cost impacts of the transmitter's presence and the need to protect ratepayers or individual customers from bearing them."
12. The Applicant disagrees. Section 2 of Appendix A sets out conditions which respond to specific issues raised by HCHI in the Summerhaven proceeding. These issues included HCHI's "expressed need to increase the capacity of a certain distribution feeder via a 27.6 kV voltage conversion... and the co-location of the new distribution line required to be built as part [of this distribution upgrade] adjacent to a portion of the proposed transmission line", as well as other related issues.³
13. The issues raised by HCHI were not "future plans," but related instead to specific measures being taken at the time of the proceeding, such that the Board panel was able to set out precise conditions as to how HCHI and Summerhaven Wind, LP would work together to ensure that HCHI could carry out the specific undertakings it brought before the Board. This framework of accommodation is set out in the conditions required by the Board, which state, for example, that "the Applicant is required to accommodate the

² Decision and Order in Summerhaven Wind, LP leave to construct proceeding dated November 11, 2011, Appendix A, pg. 3 (emphasis added).

³ See Decision and Order in Summerhaven Wind, LP leave to construct proceeding dated November 11, 2011, pg. 6.

HCHI Upgrades” which included setting out certain “[s]pecific accommodation measures”.⁴

14. Accordingly, the Applicant maintains that Hydro One’s evidence relating to future use or plans respecting distribution assets should be struck.

Has Hydro One Requested a Generic Hearing?

15. Under the subheading “Generic Hearing vs. s. 92 Relief”, Hydro One submits that at the time of the GRWLP proceeding, when it made the submission that “a section 92 proceeding is likely not the best place to address... longer term issues”, it was the expectation of Hydro One that:

[T]he 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.

16. In other words, Hydro One is unsatisfied with the Board’s determination of the scope of its generic regional planning policy initiatives. It claims that this limited scope becomes a “regulatory gap” that should be filled by expanding the scope of this leave to construct application.
17. However, the Board’s decision to not address these issues in regional planning or in a code amendment is an *exercise* of its regulatory policy, not a “gap” in regulatory policy. If Hydro One disagrees with the Board’s policy, the Applicant submits that this s. 92 proceeding is not the appropriate forum to address this disagreement. As stated in the Motion, any consultation on the Board’s part on generator connection issues will have to consider a broad range of issues from various stakeholders. Furthermore, the jurisdiction accorded to this Board panel does not extend to the consideration of generic generator connection issues.⁵
18. In sum, therefore, the Applicant submits that Hydro One’s evidence on the issues it provides as evidence of a “regulatory gap” should be struck as it would not be relevant nor appropriate for the Board to consider evidence on these issues in this proceeding.

Bluewater Submissions

19. The Municipality of Bluewater submits that its evidence should not be struck because it seeks to address issues that will have an impact on the quality and reliability of the electricity service provided to the residents of Bluewater.⁶ Bluewater makes a number of general statements about stray voltage and states that the evidence filed makes

⁴ Decision and Order in Summerhaven Wind, LP Leave to construct proceeding dated November 11, 2011, Appendix A. pg. 2.

⁵ See *Ontario Energy Board Act*, 1998, s. 4.3.

⁶ Municipality of Bluewater Reply to Motion to Strike Evidence, pg. 1.

recommendations as to how stray voltage can be reduced. Bluewater concludes that “[b]y burying the transmission lines for the project, the quality of electricity service... can be improved.”⁷

20. The Applicant maintains its submission that the two generic studies filed by Bluewater are not relevant to this proceeding because they do not address the electricity transmission line that is the subject of this proceeding. Section 96 (2) of the *Ontario Energy Board Act, 1998* provides as follows (emphasis added):

(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 sources.

21. In a section 92 proceeding, the Board is considering the electricity transmission line which is the subject of the leave to construct application. Bluewater has provided no evidence whatsoever to indicate that the Applicant’s transmission line will pose any specific stray voltage problem.
22. The evidence submitted by Bluewater is therefore not relevant to this proceeding as it is not directed at the transmission line being built by the Applicant. Indeed, the evidence amounts to a general critique of overhead transmission lines, which is not an issue before the Board in this proceeding. Moreover, the prevalence of overhead transmission lines in the province indicates that in fact, the Board has been supportive of overhead transmission lines.
23. The Applicant therefore maintains that the evidence submitted by Bluewater is not relevant to this proceeding and should be struck. In the alternative, it should be given no evidentiary weight and should be treated as a letter of comment.

Group Submissions

24. The Group submissions state that the Group evidence includes:

In point #1, the interests of consumers with respect to prices and the reliability and quality of electricity service. In point #2, the promotion of renewable energy sources “in a manner consistent with the policies of the Government of Ontario.”⁸

⁷ Municipality of Bluewater Reply to Motion to Strike Evidence, pg. 3.

⁸ Group response to Applicant’s Motion to Strike Evidence, pg. 1.

25. However, the evidence does not consider the above points in any manner which addresses the transmission line being proposed by the Applicant. The evidence filed by the Group is a general critique of the Government of Ontario's renewable energy policy. No evidence is provided whatsoever in respect of the specific transmission line which is the subject of this proceeding, in fact, the evidence mentions the "K2 proposal" which the Applicant understands to be a project proposed by another company.
26. The Board's Procedural Order No. 1 is very clear on the point that "policy and other issues concerning the Ontario Power Authority's feed in tariff program, and the Ontario government's renewable energy policy" are not within the Board's jurisdiction in this proceeding.
27. The Applicant therefore submits that like the Bluewater evidence, the Group evidence is not relevant to this proceeding and should be struck.⁹ In the alternative, it should be given no evidentiary weight and should be treated as a letter of comment.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: April 24, 2013

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⁹ This includes the commentary on the Government of Ontario's renewable energy policy filed by the Group in response to the motion, although the Applicant notes that this material was not filed as evidence.