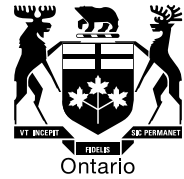


**Ontario Energy
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BY E-MAIL

April 25, 2013

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Dufferin Wind Power Inc.
Leave to Construct Application
Board File Number EB-2012-0365**

Pursuant to Procedural Order No. 6, please find enclosed Board staff's submission in the above proceeding.

Yours truly,

Original Signed By

Leila Azaïez
Case manager

c. All parties



Ontario Energy Board Staff Submission

Leave to Construct Application

EB-2012-0365

April 25, 2013

THE APPLICATION

Relief-sought

On September 21, 2012 Dufferin Wind Power Inc. (“DWPI” or the “applicant”), a registered New Brunswick corporation, jointly owned by Longyuan Canada Renewables Ltd. and Farm Owned Power (Melancthon) Ltd., applied to the Board under sections 92, 96(2), 97 and 101 of the *Ontario Energy Board Act, 1998* (the “Act”) for: leave to construct electricity transmission facilities; approval of several forms of easement agreement; and approval to construct certain transmission facilities upon, under or over a highway, utility line or ditch.

The Project

The project consists of a 34.5 kV/230 kV intermediate transformer station, a 230 kV switching station, approximately 47 km of primarily overhead 230 kV three phase single circuit transmission line, and 100 m 230 kV interconnection connecting the future switching station to the existing Orangeville Transformer Station.

This project is designed to satisfy DWPI’s contractual obligations with the Ontario Power Authority (“OPA”). DWPI holds a 20-year feed-in-tariff (“FIT”) contract with the OPA in respect of the sale of 99.1 MW of electricity generated at its wind farm, the Dufferin Wind Farm. DWPI has applied to the Board to connect to the IESO-controlled grid at Hydro One Networks Inc.’s (“HONI”) end. DWPI noted in its pre-filed evidence that the wind farm and the associated collector system are excluded from this application and as such, beyond the scope of this proceeding. Under the FIT contract, the date for commercial operation is January 30, 2014¹.

The applicant submits that it has determined through consultations, technical and environmental reviews that the proposed route is preferred over several different transmission routes and designs, and lists in its amended argument-in-chief² various technical and societal factors that it considered in weighing various alternatives. DWPI also included in its pre-filed evidence material on an abandoned design, the 69kV alternative³. In response to Lori Bryenton’s interrogatory # 7 requesting data on line

¹ Board Staff IRR 2(iii)

² §22

³ Exhibit H, Tab 2, Schedule 2, Appendix B

losses comparing the 230 kV 47km line to the 69 kV 36 km design, DWPI stated in part that:

The reason transmission voltages are higher is to reduce current flow through the conductors, which in turn reduces losses. Therefore, even if the route is physically longer, with the increase in voltage from 69 kV to 230 kV the losses are still reduced.

In the report appended to CORE's letter of April 17, 2013, on the selection of this particular transmission project, the paragraph titled "Why a 230 kV Power Line" states as follows:

A 230 kV power line is being used because Hydro One requires DWPI to utilize a 230 kV power line to connect into the Orangeville Transformer Station [...]. The 230 kV power line is oversized and will only ever be used at just under one half of its capacity. The maximum power production of the wind farm [...] will utilize less than 50% of the capacity of the power line.

The project's impact on the IESO-controlled grid and on Hydro One's transmission network has been evaluated through the System Impact Assessment ("SIA") and the Customer Impact Assessment ("CIA"). The IESO concluded that the connection of this project will not adversely impact reliability and, on August 31, 2012, issued a Notification of Conditional Approval of Connection⁴, adding that final approval will be granted upon successful completion of the IESO Market Entry process. The IESO's report⁵ also concluded that Hydro One has to make some minor upgrades at the interconnection point. Hydro One issued a Final CIA Report⁶ on August 31, 2012, confirming that the proposed transmission facilities will not have any adverse impact on Hydro One customers.

DWPI confirmed that this project is exclusively intended to convey electricity from the wind farm, and that as such, DWPI does not intend to obtain a transmission licence. DWPI also confirmed that it will construct and own the applied-for transmission facilities and will bear all costs associated with them, including those on the upstream transmitter's end⁷. Operationally, DWPI indicated that it has selected an Ontario-based

⁴ Exhibit H, Tab2, Schedule 1, Appendix A

⁵ Exhibit H, Tab2, Schedule 2, p.5

⁶ Exhibit H, Tab 3, Schedule 1, Appendix A

⁷ Board Staff IRR 10(i)

contractor to design and build the transmission facilities⁸, and plans to retain another third party to operate and maintain the facilities⁹.

Amendments to the Application and the Renewable Energy Approval (“REA”)

During the course of the proceeding, DWPI filed two amendments to its application; both had implications for the REA, but neither impacted the Notice issued in the Board’s proceeding. The first change, filed on November 23, 2012, was required in part due to a change in the proposed location of the switching station. The second change, filed on March 28, 2013 related mainly to some modifications in the transmission line overhead and underground segments.

The environmental impact of the project which is determined through the REA process is ongoing. DWPI submitted evidence that the Ministry of the Environment had been appropriately notified of the above-mentioned amendments. The applicant expects the environmental review process to be complete by June 2013¹⁰.

LAND MATTERS

Overview

The project will be entirely located within the County of Dufferin (the “County”), will affect privately held land, as well as municipal, Crown and County lands, and will involve permanent and temporary land rights for the construction of the transmission infrastructure and for access to the lands during construction. Approximately 31.2 km of the transmission line will run along a rail corridor, where the majority of the lands affected are owned by the County. The remaining 15.6 km are on private lands.

In its amended argument-in-chief, the applicant indicated that along the 15.6 km segment, with the exception of 110 m located within a municipal right-of-way, it has secured transmission easements or leases. In the case of the 110 m segment, DWPI indicated that it intends to rely upon its statutory rights pursuant to section 41 of the *Electricity Act, 1998* to site its transmission facilities within the right-of-way. As for the

⁸ DWPI letter of February 15, 2013, §d

⁹ Board Staff IRR 4(i)

¹⁰ Amended Argument-in-Chief, §27

lands along the rail corridor, the applicant indicated that negotiations are ongoing, stating in part¹¹ that:

Approximately 31.2 km portion of the Transmission Line runs along the Rail Corridor from just south of the community of Corbetton to the Switching Station. This portion of the route is comprised of approximately 60 parcels of land which, other than certain road and highway crossings and several parcels for which the Applicant is in the process of curing historical title defects, are owned by the County of Dufferin. The Applicant and the County have been engaged in lengthy and ongoing discussions concerning DWPI's request for an easement along these lands. DWPI is hopeful that a negotiated agreement with respect to the easement will be reached with the County in the very near future so as not to adversely affect its project schedule.

DWPI has filed the following forms of land agreements for approval by the Board: a Form of Lease for the Project Substation; a Form of Option to Purchase for the Switching Station; a Form of Transmission Easement; a Form of Transmission Lease; a Form of Wind Turbine and Transmission Lease; and a Form of Transmission Easement.

With respect to traditional lands, DWPI indicated in its pre-filed evidence that it engaged and informed the concerned Aboriginal communities and organizations potentially impacted by this project.

County Lands

Supplemental interrogatories arose as a result of the changes to the transmission route filed on March 28, 2013 and were strictly limited to questions that relate to these changes. Supplemental interrogatories #19 from Lori Bryenton and #4(e) from CORE relative to County lands reached into an area unrelated to the March 28 changes and went unanswered but were subsequently discussed separately.

On April 17, 2013, CORE filed a letter asserting that the County had resolved to cease negotiations with DWPI and attached a report to the County Council drafted by the County of Dufferin dated April 11, 2013 which discussed the County lands that are affected by this proceeding. In the report, the Chief Administrative Officer stated in part that:

Mr. Hammond [of DWPI] stated that if Council is not interested in proceeding with an agreement at this time, DWPI will file for expropriation through the Ontario Energy Board immediately after the approval of the leave to construct application. Further, he

¹¹ Amended Argument-in-chief, §33

explained that expropriation *[sic]* process will cause delays that translate into financial costs. This will significantly reduce the amount of money available for a negotiated settlement.

[...]

At this point in time it appears that only two basic options exist:

1. Staff be directed to resume negotiations for an agreement to grant an easement.
2. DWPI be notified that the County of Dufferin is not willing to grant an easement and is not interested in further discussions with respect to an agreement.

On April 18, 2013, DWPI filed a letter pointing to CORE's inaccurate conclusion that the County had elected to cease negotiations and highlighted that a third option was introduced during the April 11, 2013 County Council meeting that would see the resumption of negotiations for the easement subsequent to DWPI being granted leave to construct. The applicant also noted that obtaining all necessary land rights is not a prerequisite to the approval of a leave to construct, but that the leave to construct is conditional on having all land rights secured.

BOARD STAFF SUBMISSION

The Board staff submission will focus on issues surrounding general system requirements and conditions, impact on ratepayers, and the County lands.

Board staff notes that 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 the consideration of the interests of consumers with respect to prices and the reliability and quality of electricity service, and where applicable in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources.

Need and System Requirements

Board staff notes that the applicant has filed all requisite information relative to its FIT contract, its organizational and financial capability, and the impact of the project on the IESO-controlled grid and HONI's customers. Board staff also notes that the REA process is ongoing and will extend beyond the evidentiary portion of this proceeding.

Board staff observes that no party appears to challenge the need for the project. With respect to DWPI's organizational capability, Board staff notes that although the officers of DWPI, namely the President, the Chief Financial Officer, and the Vice President of Engineering have not been officers prior of any company operating in Canada or the United States, the applicant has selected an Ontario-based contractor to design and build the transmission facilities, and plans to retain another third party to operate and maintain the facilities. With respect to the SIA and CIA, staff notes that DWPI will be required to fulfill certain obligations.

Board staff submits that in keeping with the Board's general practice, approval of the leave to construct application should be conditional on the applicant complying with all the requirements of the IESO and HONI as outlined in the SIA and CIA respectively, and be conditioned on the successful completion of the REA approval process. Should there be changes in the organizational structure of the transmission project, Board staff also submits that the applicant should inform the Board of the project's contact point for monitoring and reporting purposes.

Alternatives and Impact on Ratepayers

Board staff notes that several letters of comment and interrogatories focused on alternatives, and that DWPI has provided a rationale for electing the current design which among other things, involves a longer route, but lower line losses. Staff observes that the applicant has pointed to the fact that as a non-regulated entity, its project will not financially impact ratepayers, and that the issue of alternatives ought to be examined through those lenses.

In reviewing a leave to construct application, staff is guided by Chapter 4 of the Board's *Filing Requirements for Electricity Transmission and Distribution Applications*¹², "*Minimum Filing Requirements for Electricity Transmission Projects under Section 92 of the Ontario Energy Board Act*". Staff observes that DWPI confirmed that it will bear all costs associated with this project. With respect to the modifications at the transmitter's end, staff notes that sections 6.3 and 6.5 of the *Transmission System Code* govern the cost allocation of any upgrades.

Although in developing this project the financial risk lies with DWPI and not ratepayers, because of finite space and the natural monopoly nature of transmission infrastructure,

¹² EB-2006-0170, revised June 28, 2012

and consistent with a balanced approach to the promotion of the use of renewable energy sources, Board staff submits that it is appropriate to conduct a robust analysis of the application and to ask questions regarding the selection of a particular project to ensure that the best possible alternative has been selected by the applicant.

Land Issues

The applicant has stated that with exception of County lands, which account for 67% of affected properties in this proceeding, and the 110 m to be located within a municipal right-of-way, it has secured the necessary land rights.

The evidence indicates that DWPI and the County have been engaged in on-going discussions concerning the Rail Corridor easement since fall 2011 but to date the easement has not been finalized.

Board staff agrees with the applicant's statement in its April 18, 2013 letter that obtaining all necessary land rights is not a prerequisite to the approval of a leave to construct. Staff also notes that a party that is granted leave to construct and cannot secure the rights necessary to build the approved transmission facilities can bring an expropriation application to the Board pursuant to section 99 of the *Act*. The *Expropriations Act* gives the Board the authority to deal with such matters when they are related to the areas of electricity and natural gas. Board staff notes that an expropriation proceeding may see delays that would affect the schedule of this project and possibly the FIT contract date for commercial operation of January 30, 2014. This may in turn affect the need for the project in the extreme case if the OPA were to terminate its contract.

All of which is respectfully submitted.