

THE INTERVENOR GROUP - INTERROGATORY #1

Interrogatory

References

p. 185, Proponent's Submission of Evidence, February 11, 2013

Exhibit "B" To Option Agreement

Grantor's Certificate of Independent Legal Advice

Preamble

The proponent requires a certificate of independent legal advice (ILA) from the vendor for the land parcel on which the Bornish substation will be built. The easement agreements are registered as a permanent lien against a landowner's property. The proponent did not require an ILA for the easement agreements. According to the evidence filed it had no ILA requirement.

One should note also that the proponent did not require ILA's for the wind turbine option/lease-holders. From the July 24, 2012 meeting of Keyser area residents with Ben Greenhouse, project manager, Mr. Greenhouse said the following regarding ILA's for landowners:

Resident – *So why can you sign one of these (contracts) without an ILA? I don't...*

Ben Greenhouse - *I've already answered your question. I don't know that we have. OK, that's the answer I've made. Look, we've had lots of lawyers look at this who know more about the law than I do, and you know, I'm confident we've done it right. Like I said, we offer to pay for independent legal advice. People take us up on that or not, I don't know how many have or how many haven't.*

From the documents submitted in evidence to this hearing, no ILA was required, nor did the company offer to pay for an ILA save in the case of the property transfer for the Bornish substation. One should note also that the option/lease contracts for wind turbine sites in the Bornish/ Kerwood/Jericho projects do not contain any offer to pay for an ILA nor do they require an ILA, only that the property owner has had the opportunity to seek legal advice. This is a huge "fairness" gap in the treatment of property owners. Landowners know about this and consequently are resistant to dealing with a company that they see does not deal equally with all landowners.

Questions / Requests

a) Will the proponent correct this unequal treatment of landowners?

- b) If not, what reasons does the proponent have for the unequal treatment of landowners?

Response

The preamble contains information and statements that have not been substantiated, supported or tested and which are not evidence in this proceeding. Accordingly, the Board should not rely upon or give any weight to the statements made therein.

In response to the specific questions enumerated above, the Applicants respond as follows.

- a) The Applicants do not agree with the suggestion that there has been unequal treatment of landowners. The preamble is not correct in stating that “from the documents submitted in evidence to this hearing, no ILA was required, nor did the company offer to pay for an ILA save in the case of the property transfer for the Bornish substation.” Exhibit F, Tab 2, Schedule 1, Exhibit E contains the Applicants’ form of Option to Purchase in respect of the Interconnection Facilities, being the Parkhill CTS. Section 7.2 of this option agreement includes an acknowledgement from the Grantor that it has had the full opportunity to obtain independent legal representation and references a form of certificate of independent legal advice contained at Exhibit B thereto. The language in this agreement is the same as that in the form of Option to Purchase in respect of the substation, which is filed in Exhibit F, Tab 2, Schedule 1, Exhibit D. Moreover, the form of Transmission Easement Option Agreement filed at Exhibit F, Tab 2, Schedule 1, Exhibit B includes, at section 2.3 thereof, an acknowledgement from the Owner that it has had the opportunity to obtain independent legal representation. Finally, it is the policy of the Applicants to offer to pay the costs of landowners in such circumstances obtaining independent legal advice.

The Applicants note that although the preamble refers to land agreements relating to the wind turbine sites, such agreements are not in evidence and are not relevant to the Application. Moreover, the Applicants note that this interrogatory has been inappropriately posed since, contrary to Rule 28 of the Board’s Rules of Practice and Procedure, the preamble contains argument and unsubstantiated facts not set out in the Applicants’ evidence. In particular, a quote is used and appears to have been derived from a recording of a meeting at which Mr. Greenhouse was present. Mr. Greenhouse’s permission was not sought and he was not made aware of the intention to record or transcribe the meeting. Consequently, any recording of such meeting may have been made in violation of the Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5 and, in any event, was carried out inappropriately. The Board should therefore not accept or give any weight to the comments made in the preamble.

- b) See response to (a).

THE INTERVENOR GROUP - INTERROGATORY #2

Interrogatory

References

None.

Preamble

In the Bornish Wind Energy Centre Natural Heritage Assessment Addendum II Report, dated February 2013 it states:

(http://www.nexteraenergycanada.com/pdf/bornish/NHA_AddndmIIRprt_20130208.PDF).

“As a result of new information obtained relating to the potential for significant wildlife habitat within the project area, this Addendum has been prepared to address the presence of a potential bald eagle (*Haliaeetus leucocephalus*) nest site, and the appropriate objectives and any necessary mitigation measures or contingency plans associated with the documentation of this nest.”

The addendum goes on to state:

“According to the Draft Ecoregion 7E Criterion Schedule Addendum to the SWHTG (OMNR 2012), the Bald Eagle nest, plus a 400m to 800m zone around the nest is considered to be the Significant Wildlife Habitat.”

Residents can see that the nest is active and has a pair of bald eagles resident within it. Recorded are these distances from the Bald Eagle Nest (Table 1, p. 10):

Distances from Nest Location (m)

Wind Turbine – 634 m (T3), 741 m (T2) Access Road – 524 m

Overhead Line – 508 m

Underground Line – 480 m

Supporting Infrastructure – 187 m

The addendum further notes that:

“Project layout will be constructed so that all construction activities will occur at least 200 m from the nest location, and outside of both the primary and secondary habitat zones” (Table 4, p. 20)

“Project layout will be designed so that all infrastructure, except for the transmission line, will be set back from the nest a minimum of 400m.” (Table 4, p. 20)

Questions / Requests

- a) Please clarify what is meant by the “supporting infrastructure”.
- b) Please explain how the construction of this supporting infrastructure, and the operation of it, will affect the eagles and their habitat.
- c) Please explain how construction of the “supporting infrastructure” will be 200 m away from the Bald Eagle Nest, when the distance in Table 1, page 10 notes it will be 187 m away.
- d) Explain how the “supporting infrastructure” itself will be set back a minimum of 400m from the nest.

Response

The preamble contains information and statements that have not been substantiated, supported or tested and which are not evidence in this proceeding. Accordingly, the Board should not rely upon or give any weight to the statements made therein.

In response to the specific questions enumerated above, the Applicants respond as follows.

- a) The preamble only makes reference to Bornish’s Natural Heritage Assessment and directly relates to environmental matters. The consideration of environmental issues, including potential impacts of the proposed transmission facilities on wildlife, is beyond the scope of this proceeding. As explained by the Board in Procedural Order No. 1, dated April 15, 2013:

Environmental issues are not within the scope of the Board’s review, but are considered within the Ministry of the Environment Renewable Energy Approval (“REA”) process. Although the Board has no role in the REA process, any approval of this application would ordinarily be conditional on all necessary permits and authorizations being received, including an approved REA.

Issues relating to land-use, land valuation, construction activities, and health and aesthetics are also not within the scope of the Board's jurisdiction.

If parties pursue issues which are beyond the scope of this proceeding, the associated costs will not be eligible for any cost award.

- b) See response to (a).
- c) See response to (a).
- d) See response to (a).

THE INTERVENOR GROUP - INTERROGATORY #3

Interrogatory

References

None.

Preamble

As recently as the 3rd week in March, a landman for CanAcre, J. Forster, informed Joe Minten that the transmission line was now going on the west side of the road over the old Keyser Store (the "Store"), which is part of the Minten property. All but 10 feet of the Store is on the right of way (ROW) of the Kerwood Road. Mr. Forster again pressed Mr. Minten to sign an easement for the property.

Questions / Requests

- a) What is the exact route of the transmission line from the substation to the Ausable River?
- b) The store also has a flag-pole attached to it. Please provide a detailed engineering solution that takes into account the issue of induced current onto the flag pole and building.

Response

- a) The route proposed by the Applicant for the transmission line, including the portion of the route from the substation to the Ausable River, is described in Exhibit B, Tab 4, Schedule 1 and Exhibit B, Tab 2, Schedule 4, Figures 1 and 2. Regarding the specific design in the area of the Store (which is not an operating commercial establishment), there are existing Hydro One distribution lines on the opposite side of the road. The Applicant has initiated discussions with Hydro One to determine if Hydro One would be able to relocate its distribution lines underground in that location so as to enable the Applicant to run its proposed transmission line overhead along the side of the road that is opposite the store. Any costs to Hydro One of such relocation would be the responsibility of the Applicant. If Hydro One is able to accommodate this request, the Applicant would be amenable to designing its line in this manner. If Hydro One is not able to accommodate this request and a change in design is required, then the Applicant would work with the relevant landowner or pursue the necessary statutory remedies subsequent to the granting of leave to construct in order to allow for the route to go around the store.
- b) This question raises a concern with induced current. Please see the Applicant's responses to Board Staff IR #10(b) and Intervenor Group IR #3a, above.

THE INTERVENOR GROUP - INTERROGATORY #4

Interrogatory

References

None.

Preamble

Landmen representing CanAcre have also continued their efforts to obtain signatures from both Ron and Katherine Minten regarding an easement for the properties they own that abut the Kerwood Road. These lands are used for pasturing the cattle of their organic dairy operation. If the transmission line is located near the edge of the ROW, there will be an area of induced current affecting both the fence and the ground beneath. From observations of the nearby 115 kV “pump line”, these effects can be seen as far out as 50 feet from the center of the transmission line. This is a well-known effect amongst farmers who own land that has the “pump line” located on it. In a pasture, the boundary of the area of induced current is well-defined. The cattle simply will not graze where they are being electrically shocked. The implications for the Minten dairy operation are greater as they must pasture their cattle as a condition of their contract to be organically certified. There is a significant increase in risk of electrocution from lightning strikes near these high tension lines. Safety, both for humans and animals, is a primary factor of consideration.

Questions / Requests

Please provide documentation regarding the steps that have been taken to ensure the property owners will not suffer these effects from the transmission line.

Response

The preamble contains information and statements that have not been substantiated, supported or tested and which are not evidence in this proceeding. Accordingly, the Board should not rely upon or give any weight to the statements made therein.

In response to the specific question enumerated above, the Applicants respond as follows.

Induction of a metal fence is unlikely to occur in this instance due to the voltage proposed and the separation between any such fence and the transmission conductors. The proposed transmission facilities will be designed and constructed in accordance with applicable standards so as to mitigate any risk of induction. See the Applicant’s responses to Board Staff IR #10(a) and (b).

THE INTERVENOR GROUP - INTERROGATORY #5

Interrogatory

References

None.

Preamble

Similarly, the dairy operation of John and Pam Peeters is affected by the proximity of the transmission line to their lands. Although it is not an organic dairy, as a matter of best practices, they too pasture their cattle on land abutting the Kerwood Road ROW. There is an economic impact and safety impact. Safety is a primary factor.

Questions / Requests

Please provide documentation regarding the steps that have been taken to ensure the property owners will not suffer these effects from the transmission line.

Response

The preamble contains information and statements that have not been substantiated, supported or tested and which are not evidence in this proceeding. Accordingly, the Board should not rely upon or give any weight to the statements made therein.

In response to the specific question enumerated above, the Applicants respond as follows.

See Applicant's response to Intervenor Group IR #4.

THE INTERVENOR GROUP - INTERROGATORY #6

Interrogatory

References

None.

Preamble

From the Store to the north, the route of the transmission line is unclear. From information received previously, it appears that it must cross Townsend Line, whose intersection with the Kerwood Road is already congested and complicated by utility poles and houses. It is the site of numerous vehicular accidents. Adding the massive 100 foot tall poles and transmission lines will significantly increase the safety risk to road users and local residents. It would appear that if the transmission line is to go through the area of the intersection, then a complete re-design of the intersection is required. Safety of the installation is a primary factor.

Questions / Requests

Please provide documentation regarding the steps that have been taken to eliminate any increased risk to road users and local residents arising from the installation of the transmission line at this location.

Response

The preamble contains information and statements that have not been substantiated, supported or tested and which are not evidence in this proceeding. Accordingly, the Board should not rely upon or give any weight to the statements made therein.

In response to the specific question enumerated above, the Applicants respond as follows.

The transmission line will be designed and constructed in compliance with applicable rules and requirements with regard to road safety, including, but not limited to the standards of the Ministry of Transportation Ontario (MTO). The MTO's applicable standards include the Ontario Traffic Manual as well as its Building and Land Use Policy. In accordance with these standards, the Applicant has designed its transmission facilities in the referenced area so as to have poles placed away from the intersection in a manner that does not give rise to visual impacts for motorists. The Applicant has worked with the County's Engineer, responsible for roads, by providing drawings and visiting the site. In response to requests from the County Engineer, certain pole locations have been revised to reduce visual impact on motorists while remaining within the road allowance.

THE INTERVENOR GROUP - INTERROGATORY #7

Interrogatory

References

None.

Preamble

From the limited information that has been submitted by the proponent, which do not appear to include detailed engineering drawings, it would appear that 100 foot tall poles are to be used for the transmission line. The construction and operation of such a line will have an enormous physical impact on the adjoining properties, much more than a distribution line. This was apparently recognized by the proponent as the CanAcre landmen continue to seek various property easements from the adjoining landowners in the Keyser area. Joe Minten, Ron Minten and John Peeters have had recent and repeated calls or visits from CanAcre landmen.

Questions / Requests

Please provide detailed field notes from the proponent and Canacre regarding these solicitations and the easements sought be submitted to this hearing.

Response

The preamble contains information and statements that have not been substantiated, supported or tested and which are not evidence in this proceeding. Accordingly, the Board should not rely upon or give any weight to the statements made therein.

In response to the specific question enumerated above, the Applicants respond as follows.

The Applicants continue to pursue private land rights for the reasons described in response to Board Staff IRs #9 and #15. The field notes requested by the intervenor would consist of records of negotiations between the Applicants and specific landowners and are not related to the nature of the use and purpose of the use of the lands, which based on the above preamble appears to be the focus of this request. On this basis, the field notes are not relevant to the proceeding.

THE INTERVENOR GROUP - INTERROGATORY #8

Interrogatory

References

None.

Preamble

None.

Questions / Requests

Residents are unclear as to whether the proponent needs easements to construct this line. Please provide exact details regarding the easement requirements for the transmission line as it is proposed. So far, residents have no better knowledge of what the exact proposal is than they did a year ago. With landmen approaching residents and presenting (orally) different opinions, residents are left very confused.

Response

The preamble contains information and statements that have not been substantiated, supported or tested and which are not evidence in this proceeding. Accordingly, the Board should not rely upon or give any weight to the statements made therein.

In response to the specific question enumerated above, the Applicants respond as follows.

See Exhibit F, Tab 1, Schedule 1 of the pre-filed evidence for each of the applications in EB-2013-0040 and EB-2013-0041 regarding the land rights required by the Applicants. See also responses to Board Staff Interrogatories #9 and #15 regarding lands adjacent to the ROW.

THE INTERVENOR GROUP - INTERROGATORY #9

Interrogatory

References

None.

Preamble

At a meeting of Keyser area residents with a Nextera rep and two CanAcre landmen held on July 24, 2012, a question was asked about how stray voltage (current) would be handled.

Ben Greenhouse, project manager for NextEra's Kerwood Wind project answered:

*So first off, stray voltage, again I'm not an engineer but lots of questions about this. The lines out here serving houses have ground wires and those wires are supposed to have no voltage on them. They're supposed to be neutral. If voltage gets onto them, they're supposed to send it to ground. Stray voltage occurs when for some reason those ground wires which are supposed to have no voltage end up with a voltage. It can happen in a bunch of ways. The typical way it can happen is if you have wires close by to it or if the wires, so the – for instance if we were to connect into the system out here and put more voltage into those existing wires than there currently is, or anyone was to connect in for any reason and put more voltage. That change of use of those existing wires can start a voltage on the ground that's supposed to have none. That flow back into a house or a barn where there's supposed to be no voltage and things that are grounded like a water trough or a water line can actually get a voltage on them and the cow or someone touches it can get a tingle. So that's the problem of stray voltage. The first thing here compared to some other projects in Ontario is that we're not using new wires to feed your house, so we're not changing the pattern on those. And in theory, even if we use the same poles, the separation should be enough to avoid it. In practice, the field from the wires can induce a small voltage on the ground anyway. So there's a couple ways to deal with it. First off the electricity code of Ontario has a mandated voltage that can be supplied on a neutral to a customer. So, if you were to complain to NONI or the OEB that you thought you had stray voltage even today, HONI would have to measure it and they'd have to show, I believe its 0.1V, so that they're not contributing more than 0.1V. whatever it is, it's a certain level. And there were more they'd have to fix it and there's lots of ways to fix it. **They can increase the grounding so that it, before it gets to here it flows down into the ground...** [Emphasis added] and I'm being a little long-winded, but it's an important question. So, even if I wasn't here, that's what would happen. Hydro would have to come out and test. What we have seen in*

*other OEB hearings where we get into the details, typically the utility in the area would be involved in those hearings. They'll ask us to talk about our design and to sort of help them get comfort that they won't be exposed to liability. They don't want to have their customers calling and coming – because if you're HONI and now people are calling you saying "I've got issues " and they come and measure and it's more than 0.1V and they'll come and ask what are you guys doing? So what we've done in other areas is we've done pre-energization surveys before we energize our line so there's no way we're losing voltage, to see what the existing voltage on the neutral is – because there always is. It's never perfect, there's always the possibility of having some. And then we've done surveys afterwards to see if it has changed. **And then if it has changed, the simplest to fix it is just to hook more grounds on.** [Emphasis added] They don't always ground every pole, it's my understanding, as few poles as needed by the electrical design. But if you put more grounds or better grounds, essentially you have to think of it as water, think of it as a drain. If it does get a voltage it'll drain down. So that's one way.*

Questions / Requests

Please provide a detailed electrical impact study that can be independently reviewed to address this issue, especially as now NextEra alone is responsible for safety issues relating to the transmission line, after not being permitted any co-location of distribution lines with transmission lines. Residents need the assurance of an independent review. Mr. Greenhouse's suggested fix, "...hook more grounds on," does not inspire confidence. Safety should be done from a precautionary view, not reactive.

Response

The preamble contains information and statements that have not been substantiated, supported or tested and which are not evidence in this proceeding. Accordingly, the Board should not rely upon or give any weight to the statements made therein.

In response to the specific question enumerated above, the Applicants respond as follows.

See Applicants' response to Board Staff IR #10(b), which addresses the issue of stray voltage.