



BOARD STAFF SUBMISSION

EB-2012-0442

June 14, 2013

Application & Background

Varna Wind, Inc. (the “Applicant”) filed an application with the Ontario Energy Board (the “Board”) on November 16, 2012 under sections 92 and 96(2) of the *Ontario Energy Board Act, 1998* (the “Act”). The Applicant has applied to the Board for leave to construct an electricity transmission line and related facilities (collectively, the “Facility”). The Facility will consist of:

- a 115 kV transmission line (the “Transmission Line”) approximately 23 km in length, comprising a single circuit overhead line extending from a newly constructed transforming substation (the “Substation”) to the point of interconnection at an independent breaker (described below) that connects to an existing Hydro One Networks Inc. (“Hydro One”) transformer station, Seaforth TS;
- the Substation from the pull-off tower (“Substation”); and
- a newly constructed independent breaker (the “Breaker”) connecting to Hydro One’s Seaforth TS.

The Facility will be located in the municipalities of Bluewater and Huron East, and will be used to connect the Bluewater Wind Energy Centre (“BWEC”), a proposed 59.9 MW wind energy generation facility which was awarded a 20-year power purchase agreement under the Ontario Power Authority’s Feed-in Tariff program (the “FIT Program”) in July 2011.

The Board issued a Notice of Application dated December 12, 2012, and directed the Applicant to serve and publish the Notice.

On February 4, 2013, the Board issued Procedural Order No.1, which set out the schedule for the interrogatory process and provided the list of Board approved intervenors.

The Board granted intervenor status to the following parties: the Independent Electricity System Operator (the “IESO”), Hydro One, the Municipality of Bluewater (“Bluewater”), a group of landowners (the “Group”), and individual landowners - J.R. McLachlan, Jeff Allan, Brian and Helen Oldfield (the “Oldfields”) and Gerhard and Heather Ritzema (the “Ritzemas”).

On March 13, 2013, the Board issued Procedural Order No. 2 which, among other things, set out the date for the filing of intervenor evidence. Hydro One, the Oldfields; the Ritzemas; the Group; and Bluewater submitted intervenor evidence.

Board staff and the Applicant submitted interrogatories on intervenor evidence. Responses to interrogatories were provided in accordance with the Board's Procedural Order.

On April 10, 2013, the Applicant filed a motion: (a) to strike the evidence filed by Hydro One, Bluewater, and the Group on the basis that this evidence is irrelevant; and (b) to allow for the Applicant to file Reply Evidence.

On April 12, 2013, the Board issued Procedural Order No. 3 which set out the schedule for filing written submissions on the motion and deferred the date for filing responses to interrogatories on intervenor evidence to May 3, 2013.

On May 2, 2013 the Board issued Decision on Motion and Procedural Order No. 4. The Board dismissed the motion to strike evidence and granted the Applicant's request to submit Reply Evidence. In its Order, the Board set out the dates for filing interrogatories on the Applicant's Reply Evidence, responses to interrogatories and the schedule for filing final arguments.

Pursuant to Procedural Order No. 4, the Applicant filed its argument-in-chief on June 3, 2013.

Scope of Board's Jurisdiction

In clarifying the scope of the proceeding, the Board in Procedural Order No. 1 stated:

"In this proceeding, the Board is required to consider only the public interest, which is defined as follows by subsection 96(2) of the Act:

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.

Board approval of the form of easement agreements is within the scope of the Board's jurisdiction pursuant to section 97 of the Act.

The Board does not have the power to consider any other issues”.

The Board provided further guidance and stated:

“Parties requesting intervenor status have indicated a broad range of interests in this proceeding. However, the Board notes that the following types of issues are **not** within its jurisdiction: environmental issues; issues related to matters of health; land-use issues; issues relating to the BWEC wind farm; policy and other issues concerning the Ontario Power Authority's feed in tariff program; and the Ontario government's renewable energy policy. It is important to note that, in addition to the Board's proceeding, the BWEC project is subject to a separate Renewable Energy Approval (“REA”) process, which is conducted by the Ministry of the Environment. Generally speaking, environmental issues are considered in the REA process”. [*Emphasis in original*]

Submission

Board staffs submission addresses the following topics:

- Project Need
- Route of Transmission Line
- Land issues and form of Easement Agreements
- System Impact Assessment and Customer Impact Assessment
- Project Cost and Impact on Rate Payers
- Hydro One's evidence

Project Need:

As noted above, the Board's jurisdiction in a section 92 leave to construct application is limited to the consideration of the interests of consumers with respect to prices, the reliability and quality of electricity service and where applicable and in a manner consistent with the policies of the provincial government, the promotion of the use of renewable energy resources.

The Applicant states that the wind generation facility and the transmission facilities are being developed to further the provincial government's policy objective of increasing the amount of renewable energy generation being added to the provincial grid. To that end, the Applicant noted that it has been awarded a 20-year power purchase agreement under the Government of Ontario's FIT program and that the BWEC will add up to 60 MW of renewable energy to the grid each year.

Board staff has reviewed the evidence and submits that need for the project has been sufficiently justified.

Route of Transmission Line

As stated above, the transmission facilities comprise a 115 kV Transmission Line, a Substation and a Breaker.

The lands upon which the Facility will be located are referred to as the "Corridor".

The Corridor includes Centennial and Hensall Roads and certain private lands adjacent thereto, from the site of the Substation on the south side of Centennial Road between Goshen Line and Babylon Line in the Municipality of Bluewater to the site of the Seaforth TS on the east side of Hensall Road between Front Road and South King Street in the Municipality of Huron East.

The Substation and Breaker are to be located on private lands. The Transmission Line will originate at the Substation and terminate at the Breaker and is proposed to run along Centennial Road and Hensall Road. Approximately 50% of the line will be located within municipal rights-of-way, while the remaining sections are to be located on easements acquired from private landowners.

Due to the presence of a Hydro One distribution line along 14.5 km of the route, the Applicant has located the Transmission Line on the other side of the road from the Hydro One line. The Applicant was unsuccessful in reaching an agreement with Hydro One which would allow for transmission and distribution lines to be located on the same pole (or joint use).

While no party objected to the location of the Breaker or the Substation, a number of the landowner-intervenors¹ expressed concern with the route of the Transmission Line.

The Applicant stated that as part of its route selection process, it had evaluated a number of alternate routes along back country corridors. These alternate routes were rejected due to unacceptable environmental impacts (provincially significant wetland interference or tree clearing) or disinterest of landowners. In addition, the Applicant noted that several other roads were considered as corridors or routes but were disqualified due to higher concentrations of residences, large amounts of pre-existing infrastructure in the right-of way or unacceptable environmental impacts.

The Applicant also stated that it has significant landowner support which is noted by the fact that it has successfully executed land use agreements with all directly affected landowners.²

Board staff also notes that the Transmission Line is routed along existing roadways and rights-of way, which is usually preferred given that it results in lesser disturbance to the environment. Board staff also notes that the project has received the Renewable Energy Approval.

Board staff notes that the Applicant has explored a number of alternatives and is satisfied that the route of the Transmission Line is reasonable.

Land issues and form of Easement Agreements

Section 97 of the Act requires that the Board be satisfied that the Applicant has offered or will offer each landowner affected by the proposed route or location an agreement in a form approved by the Board.

The Applicant has entered into agreements with landowners for the land required for the Breaker and the Substation. The forms of agreement are at Exhibit F/ Tab 1/ Schedule 3 and Schedule 4.

With respect to the Transmission Line, 12 kms of the line will be located on municipal rights-of-way. The remaining portion will be located on private lands.

¹ Refers to landowners who are intervenors in the proceeding

² The Group interrogatory no. 5 (b)

While the Applicant has entered into easement agreements with all Directly Affected Landowners³, it has had limited success with the Adjacent Landowners⁴.

All landowners were offered one of two standard form of transmission easement option agreements (each an "Option Agreement"). The two forms of Option Agreements are at Ex F/T1/S2.

Some of the landowner-intervenors have expressed concern with the easement agreement that has been presented by the Applicant.

The Applicant for its part states that, it has made significant efforts to alleviate landowner concerns related to the agreement, including amending some terms to address specific provisions. In cases where agreement terms could not be amended, the Applicant claims that the reasoning for the inclusion of the provision was fully explained and support material provided if required. Upon request, the Applicant also provided reimbursement for legal expenses up to \$1500 to landowners.⁵

Board staff does not have any concerns with the forms of agreement that have been presented. Board staff observes that the forms of easement agreement provided in evidence appear to be similar to those that have been presented in other recent leave to construct applications. Board staff also notes that the Applicant has been successful in entering into agreements with all Directly Affected Landowners along the route of the Transmission Line.

Board staff encourages the landowner-intervenors who have concerns with the easement agreements to identify for the Board, the specific clauses in the easement agreements that they have issues with.

System Impact Assessment and Customer Impact Assessment

The Applicant has submitted a System Impact Assessment ("SIA") and Customer Impact Assessment ("CIA"). The SIA states that the connection of the BWECC via

³ At Ex F/T1/S1, the Applicant defines Directly Affected Landowners are landowners who "will have transmission infrastructure built directly on" their property.

⁴ At Ex F/T1/S1/p. 1, the Applicant defines Adjacent Landowners as landowners whose property is located adjacent to the Corridor. Additional aerial overhead, guy and anchor and temporary construction easements may be acquired from the Adjacent Landowners under certain circumstances.

⁵ Argument-in-chief, p. 7

the Facility is acceptable to the IESO⁶.”

The Customer Impact Assessment (“CIA”) performed by Hydro One found that the proposed BWECC and the Facility are not expected to adversely impact the transmission customers in the area⁷.

Further, the Applicant has confirmed that it will construct the Facility in accordance with the recommendations and conditions in the SIA and CIA.

Based on the findings in the SIA and CIA, Board staff is satisfied that the proposed connection will not adversely impact the reliability of the integrated system or other transmission customers in the test area.

Project Cost and Impact on Rate Payers

In its prefiled evidence, the Applicant states that no network reinforcements are required for the Facility. In its argument-in-chief, the Applicant confirmed that “the cost of the Facility will be borne by it and that the Facility will not have any adverse impact on the price of electricity in the wholesale market or on transmission rates”.

Board staff observes that the SIA Report sets out certain modifications that the transmitter, in this case Hydro One, is required to undertake for the incorporation of the project. These requirements are set out in the section titled Transmitter Requirements, at page 2 of the SIA Report.

Board staff requests that the Applicant clarify and confirm that none of the Transmitter Requirements that are noted in the SIA Report are network level upgrades and that the cost of the noted upgrades will be paid for by the Applicant.

Hydro One’s Evidence

Hydro One states that the accommodation of the Transmission Line will impose immediate and future costs on existing and new distribution customers.

⁶ SIA Report, p. 1

⁷ CIA Report, p.

As noted earlier, the Applicant has decided to locate approximately 14.5 km of the Transmission Line on the opposite side of the road from Hydro One's existing distribution line. The need to locate the Transmission Line across from the distribution line arises from an internal Hydro One policy that prohibits joint use, i.e. the locating of transmission and distribution lines on the same pole. Accordingly, the Applicant was not successful in reaching an agreement with Hydro One that would allow joint use.

While the practice of locating the Transmission Line on the opposite side of the road from the distribution line is a frequently used solution, Hydro One submits that the location of the Transmission Line complicates its ability to access its existing and future customers and will therefore increase the connection cost for new customers.

Hydro One noted that 17 of its distribution customers are on the opposite side of the road from its existing distribution line and that these customers will lie "behind" the proposed Transmission Line. Hydro One noted that in order to gain access to its existing customers or to connect a new customer, Hydro One will have to get its lines across the Transmission Line. Therefore, Hydro One noted that the location of the Transmission Line will drive up the connection cost for future distribution customers and existing customers wanting to modify their connection.

Hydro One noted that the issue it has raised is not a one-time occurrence and is expected to recur as more generation related transmission lines are built in proximity to existing distribution systems.

Hydro One also noted that it has identified its concerns pertaining to the operation and maintenance of the Transmission Line and the allocation of immediate and future costs with the Applicant but that the parties so far have not been able to reach an agreement.

On the matter of future costs, Hydro One referenced two recent Board decisions, where the Board had opined on the matter of recovery of future costs - The Summerhaven application for leave to construct (EB-2011-0027, resulting in a Board Decision dated November 11, 2011) and the Grand Renewable Wind LP ("GRWLP") proceeding (EB-2011-0063, Board Decision dated December 8, 2011). Hydro One stated:

“In both cases, the Board decided that the relevant generator-transmitter would be responsible for the distributor’s immediate incremental costs to accommodate the transmission presence. With respect to future distribution costs, the Board, in the Summerhaven case, decided that Summerhaven should also bear [the distributors] HCHI’s incremental costs for underground road crossings, if required, due to Summerhaven’s potential configuration needs arising from environmental permitting requirements. In the GRWLP case, the Board decided that GRWLP should not be held responsible for changes required to HCHI’s future plans, as this was beyond the scope of the proceeding”.⁸

Hydro One further noted that Transmission System Code and the Distribution System Code only address the allocation of immediate costs of connecting a generator and are silent on the matter of longer-term costs that are imposed by a transmitter-generator. Hydro One also noted that the Applicant is not proposing to connect to the distribution system and is therefore not required to sign a connection agreement. Hydro One noted that absent such an agreement, it has no way of comprehensively addressing distribution system impacts. In Hydro One’s view the absence of regulatory oversight constitutes a regulatory gap.

In argument-in-chief, and on the matter of resolving near and long-term operational issues, the Applicant noted that it continues to work with Hydro One to develop protocols and procedures for the operation and maintenance of the facilities. On the matter of responsibility for immediate costs, the Applicant confirmed that it will be responsible for the cost of any direct impacts that its project causes to the quality or reliability of Hydro One’s distribution service.

With respect to the evidence filed by Hydro One on the recovery of future costs, the Applicant submitted that the evidence is out of scope in light of the Board’s Decision in the GRWLP application (EB-2011-0063) where the issue of long term costs was found to be outside the scope of a leave to construct proceeding. On the matter of the regulatory gap, the Applicant maintained that Hydro One’s evidence calls for relief (in the form of code amendments) that is beyond the authority of the Board Panel in this proceeding.

In some respects the issue that Hydro One has raised is a function of its own policy that does not allow joint use of distribution poles to support transmission

⁸ Hydro One’s Evidence, dated March 27, 2013, p. 1

lines rated above 50 kV. The Board could require Hydro One to make an exception in this case. However, given the numerous technical and operational challenges involved with joint use that still need to be studied and resolved, and the lack of information on alternate solutions, Board staff submits that this may not be a suitable approach. Board staff is also concerned that the tight construction schedule may not allow for a timely resolution of all issues around joint use.

In response to Board staff interrogatory no. 2, the Hydro One confirmed that in the past five years it has only received one request for a new connection and acknowledged that it is not expecting to receive a large number of requests for new connections along the section of the route that is at issue. Hydro One also confirmed that it has not done any studies to assess different alternatives, but that it is willing to do further research on the matter.

While Board staff agrees that the issue described by Hydro One will likely recur, staff feels given the relatively slow rate of customer growth, the Board has the benefit of time to better assess the situation. Therefore, should the Board decide to address the matter of future costs in this proceeding, staff recommends that the Board require Hydro One to further study the issue, assess the costs and benefits of the various alternatives, evaluate the appropriateness of its own policy and report to the Board.

With respect to resolving the immediate operational issues, Board staff notes that discussions between the Applicant and Hydro One are still on-going and the Applicant appears hopeful that it will be able to resolve these issues. Board staff therefore submits that the parties be allowed to resolve these matters as part of their on-going negotiations. With respect to the recovery of immediate costs, the Applicant has confirmed that it will be responsible for the costs it causes.

With respect to the treatment future costs on distribution customers, Hydro One noted that the Board, in the Summerhaven case (EB-2011-0027), had decided that Summerhaven should bear the distributors' incremental costs for underground road crossings if those costs are triggered by environmental conditions that are imposed on Summerhaven. In the GRWLP case (EB-2011-0063), Hydro One noted that the Board decided that GRWLP should not be held responsible for future changes to the distributor' plans, as this was beyond the scope of a leave to construct proceeding.

Board staff notes that the different treatment of future costs in the two above referenced decisions is due to the difference in the nature of the so-called future plans. In one case future plans were well defined and in the other case future plans were not as well defined. In the Summerhaven case the distributors' future plans were related to specific distribution upgrades that were planned and were being undertaken around the time of the proceeding. On the other hand, in the GRWLP case, the distributors' future plans were not related to any planned upgrades and lacked the immediacy and specificity of the plans presented by the distributor in the Summerhaven case.

In the current application, Hydro One has confirmed that it does not have a formal forecast of new connections along the affected route and does not appear to have plans for any major upgrades in the foreseeable future. Therefore, the Board may wish to consider whether the lack of future plans in this case, mirrors the concerns the Board had with the lack of specificity of the distributors' future plans in the GRWLP case.

All of which is respectfully submitted.