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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
Varna Wind Inc. – Reply Submissions

We are counsel to Varna Wind, Inc. (the “Applicant”) in the above-noted proceeding. Please find enclosed the Applicant’s Reply Submissions.

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, Sch. B, as amended (the "**OEB Act**");

AND IN THE MATTER OF an application by Varna Wind, Inc. for an order under section 92 and subsection 96(2) of the OEB Act granting leave to construct an electricity transmission line and related facilities.

APPLICANT'S REPLY SUBMISSIONS

INTRODUCTION

1. Varna Wind, Inc. (the "**Applicant**") filed an application (the "**Application**") with the Ontario Energy Board (the "**Board**") on November 16, 2012 for leave to construct an electricity transmission line and related facilities (collectively, the "**Facility**"). The Facility will be located in the municipalities of Bluewater and Huron East, and will be used to connect the Bluewater Wind Energy Centre to the IESO-controlled grid.
2. These submissions are in reply to the submissions filed by Board Staff and Hydro One Networks Inc. ("**HONI**") in response to the Applicant's Argument-in-Chief. In addition, these submissions provide an update on the status of accommodation measures proposed by the Applicant in response to concerns of intervenors Brian and Helen Oldfield (the "**Oldfields**") and Gerhard and Heather Ritzema (the "**Ritzemas**"). Each is considered in turn.

BOARD STAFF SUBMISSIONS

3. The submissions of Board Staff largely support the Applicant's submission that it has demonstrated, in its evidence and responses to interrogatories, that the Application meets the required criteria under section 96(2) of the OEB Act.¹ Board Staff submits that the need for the project has been justified,² that the route of the transmission line is reasonable,³ and that Staff does not have concerns with the forms of easement agreement provided by the Applicant.⁴
4. Board Staff is also satisfied, based on the findings in the System Impact Assessment ("**SIA**") and the Customer Impact Assessment ("**CIA**"), that the connection of the Facility will not adversely impact the reliability of the integrated system or other transmission customers in the applicable area.⁵
5. In response to Board Staff's request for clarification in regards to the required modifications noted in the SIA, the Applicant confirms that none of the Transmitter Requirements⁶ listed in the SIA are network level upgrades. The Applicant also confirms that the cost of the upgrades noted in the SIA will be paid for by the Applicant.

¹ See the Applicant's Argument-in-Chief at pg. 4 and 10. It should be noted that pursuant to section 97 of the OEB Act, the Board also considers the form of easement agreement offered to landowners.

² Board Staff Submissions dated June 14, 2013 (the "**Board Staff Submissions**"), pg. 5

³ Board Staff Submissions pg. 6.

⁴ Board Staff Submissions pg. 7.

⁵ Board Staff Submissions pg. 8.

⁶ These requirements are set out at the top of page 2 of the SIA, under the heading "Transmitter Requirements."

6. The Board Staff submissions also consider the evidence and arguments made by HONI in respect of immediate and future costs on existing and new distribution customers. Board Staff's submissions on this matter will be included as part of the discussion below.

HONI SUBMISSIONS

7. In its final submissions, HONI submits that the responsibility for future new or upgraded electrical services is an outstanding item that remains relevant in this proceeding.⁷
8. The Applicant disagrees. For the reasons provided below, the Applicant respectfully submits that the responsibility for un-quantified, hypothetical future new or upgraded electrical services is neither relevant nor appropriate for consideration in a leave to construct proceeding.

The Board's Mandate in a Leave to Construct Proceeding

9. The Applicant agrees with HONI that section 96(2) of the OEB Act does not exclude from the scope of the Board's review the impact on distribution ratepayers which may arise from the proposed Facility. Consequently, the Applicant has confirmed that it will be responsible for the cost of any direct impact that its project causes to the quality or reliability of HONI's electricity service.
10. However, the Applicant submits that the future impacts which HONI has asserted as relevant to this proceeding fall squarely outside the scope of a leave to construct proceeding.
11. HONI has stated that it has 17 customers who will be located "behind" the proposed Facility on the opposite side of the road from HONI's existing distribution line.⁸ HONI asserts that serving these customers, and future customers, may give rise to an added cost associated with pole changes or underground road crossings.⁹ As noted in Board Staff's submissions, HONI confirmed in response to interrogatories that it has only received one request in five years for a new connection along the section of the route at issue, and that it is not expecting to receive a large number of new requests.¹⁰

⁷ HONI also submits that "the duration of the cost responsibility provisions between the generator-transmitter and the distributor" is an item that is relevant. See HONI Submissions dated June 14, 2013 (the "HONI Submissions") pg. 3.

⁸ HONI Submissions pg. 1.

⁹ HONI Submissions pg. 1.

¹⁰ See Board Staff Submissions at pg. 11, as well as HONI answers to Board Staff IRs dated May 3, 2013 at pg. 6.

12. The Applicant submits that these un-quantified and speculative future impacts do not appropriately fall within the scope of the Board's review in a leave to construct proceeding. Indeed, the speculative nature of these costs is evidenced by Board Staff's suggestion that were the Board to address the matter of future costs, Staff's recommendation would be that HONI further study the issue, assess the costs (and benefits of alternatives), evaluate the appropriateness of its own policy (against joint use of poles) and report to the Board.¹¹
13. HONI further submits that section 96 of the OEB Act should be interpreted and applied in a manner "consistent" with provisions of the Distribution System Code ("**DSC**") and Transmission System Code ("**TSC**") in the sense that these "are generally applied in a way that addresses both current and future direct impacts on interests of parties or ratepayers, at least until determined otherwise, for the purpose of fairness and consistency."¹² HONI also submits that because the Report of the Board in respect of the Renewed Regulatory Framework for Electricity Distributors ("**the RRFE Report**") notes that the Board needs to regulate the industry in a way that serves present and future customers, it is "within the Board's scope to deal with future impacts in this proceeding."¹³
14. The Applicant does not agree that any principles of application relating to the DSC and TSC permit the Board to expand its mandate in a leave to construct application. The same is true of any general principle noted in the RRFE Report; it does not result in a change to the scope of the Board's review under s. 96(2) of the OEB Act.
15. To the contrary, HONI is seeking the Board to fix what it characterized in its evidence to be a "regulatory gap" in the TSC and the DSC. In other words, the text of the TSC and the DSC do not impose the obligations that HONI is seeking to impose in this case; HONI is therefore proposing that the Board ignore the actual terms of the TSC and the DSC and, instead, divine the "purpose" of these instruments to fill what it considers to be a regulatory gap.
16. The Applicant offers the following observations.
17. First, this panel has no authority to address the "regulatory gap" that HONI alleges to exist. HONI's complaint is not with the project being proposed in this Application, but with the provisions of the TSC, the DSC, the SIA and the CIA. All of these statutory instruments are either Codes issued under s. 70.1 of the OEB Act (the TSC and the DSC), prescribed by those Codes (the CIA) or a requirement of the IESO pursuant to the Market Rules and Market Manuals (the SIA). Each of those instruments has their own

¹¹ Board Staff Submissions pg. 11.

¹² HONI Submissions pg. 4.

¹³ HONI Submissions pg. 4.

prescribed process for considering amendments. The TSC and DSC in particular may only be amended in accordance with the process prescribed by s. 70.2 of the OEB Act. These Codes cannot be amended by a panel of the Board that has not been assigned such a power.¹⁴

18. Second, although HONI asserts that there is a “regulatory gap”, that assertion should not be accepted for the purposes of this Application. The collection of regulatory instruments that HONI argues are inadequate constitute comprehensive codes that have been the subject of stakeholder input for several years. More recently, the Board has initiated extensive consultations on distribution planning issues. HONI has played and continues to play a large role in all of these consultations. Just because it may question the results of these consultations, that does not mean that they have left a “regulatory gap” that must be filled.
19. Third, if the Board ultimately determines that it should conduct a consultation on generator connection issues, then it will have the opportunity to consider a broad range of issues from ratepayers and generators, none of whom are before the Board in this proceeding. In this regard, the issues that HONI identifies as constituting a gap that needs to be filled are incomplete and cannot be adequately addressed in a leave to construct application.
20. In other words, should the Board develop a consultation process to address the issue of generator connections to distribution systems, a number of other issues may have to be considered by the Board. The Applicant expects that other parties will have additional issues that they want addressed as well. This point is not an invitation for the Board to resolve or even identify all of these issues here. Rather, the point is that any consideration of these issues will have to consider a broader range of issues and perspectives than is available in this application, and it would not be relevant or appropriate for the Board to take evidence on this in this proceeding.

The Board's Decisions in the Summerhaven and Grand Renewable Proceedings

21. At pages 4-5 of its submissions, HONI notes that:

[T]he Board, in the Summerhaven case, decided that Summerhaven should also bear 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.

¹⁴ See OEB Act, s. 4.3.

22. HONI then submits that in this proceeding, the “facts and implications” associated with the proposed facilities are “similar to those” from the Summerhaven proceeding rather than those of the GRWLP proceeding.¹⁵
23. However, in the Summerhaven proceeding, the Board simply included a condition of approval that incorporated the possibility of changes due to final environmental permitting requirements. The condition was included to recognise that at the time of the order approving the leave to construct, the environmental permitting process was not complete.¹⁶ Consequently, it was appropriate to include the cost impacts, if any, to HCHI’s distribution system as a result of the final environmental permitting requirements.
24. Moreover, the issues raised by distributor HCHI in the Summerhaven proceeding were related to specific measures being taken at the time of the proceeding. They were not hypothetical. This stands in contrast to the future costs that HONI asserts to be relevant in this proceeding, namely, “future costs resulting from the proposed facilities...due to the extra configuration needs for safety and reliability purposes.”¹⁷ As noted above, these costs are speculative and not quantified. Board Staff agrees with this assessment, noting that:

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.¹⁸

25. In the Grand Renewable Wind LP (GRWLP) proceeding, 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

¹⁵ HONI Submissions pg. 5.

¹⁶ See Applicant’s Reply Submissions to its Motion to Strike Evidence filed April 24, 2013. The full condition reads (emphasis added): 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. See Decision and Order in Summerhaven Wind, LP leave to construct proceeding dated November 11, 2011, Appendix A, pg. 3.

¹⁷ HONI Submissions pg. 5.

¹⁸ Board Staff Submissions pg. 12.

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.¹⁹

26. The Board has therefore clearly established that hypothetical future plans, as well as impacts that “may” occur in the future, are not properly within the scope of a leave to construct application.

Summary of the Applicant's Position on Future Costs

27. In sum, the Board's practice demonstrates that when it comes to responsibility for direct costs incurred by distributors due to transmission infrastructure, these costs can be incurred in the future if they are quantified and directly foreseeable. In this case, HONI's future costs are speculative. If these costs were to be imposed on the Applicant, they would amount to an open-ended obligation on the Applicant to provide an indeterminate amount to HONI for an indeterminate period.
28. Moreover, should the Board consider developing a policy on the matter of future impacts of privately-owned transmission infrastructure on distribution, such policy development would not be conducted within a leave to construct proceeding. As noted, any consultation and policy development on generator connection matters would necessarily consider a broad range of issues and perspectives as expressed by various ratepayer groups and generators, none of whom are before the Board in this proceeding.

PROPOSED ACCOMMODATION MEASURES IN RESPONSE TO THE OLDFIELDS AND THE RITZEMAS

29. As detailed in previous submissions, the Applicant has proposed measures in response to concerns raised by the Oldfields and the Ritzemas, intervenors in this proceeding.
30. In response to the Oldfields' concerns respecting the proximity of the transmission line to their property, and despite that the originally proposed location of the transmission line complies with applicable standards,²⁰ the Applicant is working with HONI on a proposal to relocate the section of the transmission line which runs adjacent to the Oldfields'

¹⁹ Decision and Order granting Leave to Construct to Grand Renewable Wind LP (EB-2011-0063), December 8, 2011, at p. 11 (Emphasis added).

²⁰ Namely, Canadian Standards Association (CSA) standard CSA-C22.

house and barn across the street from these structures.²¹ HONI continues to carry out detailed engineering work, and the Applicant remains committed to working with HONI and is optimistic that this proposed accommodation measure will move forward as proposed.

31. The evidence of the Ritzemas' indicated that the Applicant's proposed route runs along an original municipal right of way rather than the actual road that was constructed by the municipality (Centennial Road) for approximately 200 meters. The evidence of the Ritzemas' further indicated that a portion of the land in the original road allowance is now used for agricultural purposes. Finally, the Ritzemas' indicated that they would prefer the transmission line to be placed on the original municipal right of way than over the actual road. In response, the Applicant proposed to work with the Ritzemas in respect of a mutually agreeable pole placement within the original right of way.²² The Applicant has prepared an agreement to offer to the Ritzemas which incorporates the substantive terms of the Applicant's standard easement (already filed in this proceeding) as accommodated to address the unique legal situation arising from the current use of the original right of way. A copy of this agreement will be provided to the Board shortly.

CONCLUSION

32. The Applicant is confident that it will reach an agreement with HONI in respect of the impact of the Facility on HONI's electricity service, and appreciates that HONI itself is optimistic that a mutual agreement will be reached.²³ HONI has, however, suggested that the Board include, as a condition of approval, the filing in confidence of an agreement between the parties. The Applicant is not opposed to such a condition, but submits that if included, the condition must be in relation to direct costs only as opposed to future, un-quantified and speculative costs. As the Applicant has demonstrated, the future costs brought forward by HONI in this proceeding amount to an open-ended obligation on the Applicant to an indeterminate amount for an undefined period of time, and as such the Applicant would not be prepared to agree to responsibility for these.
33. The Applicant has shown, in its evidence, replies to interrogatories and Argument-in-Chief in this proceeding, that this Application has met the criteria under 96(2), and that the construction of the Facility is in the public interest. The price, reliability and quality of electricity will be maintained, and the approval of the Facility is consistent with the

²¹ See the Applicant's Reply Evidence on Oldfield Evidence filed May 8, 2013, as well as the Applicant's Responses to Interrogatories on Reply Evidence filed May 27, 2013 and its Argument-in-Chief filed June 3, 2013 at pg. 8.

²² See the Applicant's Reply Evidence on Ritzema Evidence filed May 8, 2013, as well as the Applicant's Responses to Interrogatories on Reply Evidence filed May 27, 2013 at pgs. 2-3 and its Argument-in-Chief filed June 3, 2013 at pg. 9.

²³ HONI Submissions pg. 5.

promotion of the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario.

34. The Applicant therefore requests that the Board approve this Application as proposed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED