



EB-2013-0096

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 Goshen 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, Ontario

BEFORE: Marika Hare
Presiding Member

Peter Noonan
Member

DECISION AND ORDER
October 17, 2013

SUMMARY OF APPLICATION AND PROCEEDING

On April 3, 2013 Goshen Wind, Inc. (the "Applicant" or "Goshen") filed an application with the Ontario Energy Board, (the "Board") under sections 92, 96(2) and 97 of the *Ontario Energy Board Act, 1998*, (the "Act"). The Applicant has applied for an order of the Board granting leave to construct an electricity transmission line and related facilities ("Transmission Facilities") for the Goshen Wind Energy Centre ("GWEC"), a wind farm generation facility, and for Board approval of the form of agreements that have been or will be offered to affected landowners affected by the approved route. The Board assigned file number EB-2013-0096 to this application.

As will be discussed in further detail in this Decision, the order for leave to construct the electricity transmission line and related facilities is granted.

Goshen is a corporation constituted under the laws of New Brunswick. It is a wholly-owned subsidiary of NextEra Energy Canada ULC, which was incorporated as an Alberta corporation in 2006, having its head office in the City of Toronto, Ontario. NextEra Energy Canada ULC is, in turn, an indirect wholly-owned subsidiary of NextEra Energy Resources LLC, a company involved in wind energy generation which has offices in the state of Florida, in the United States of America. Goshen, NextEra Energy Canada, ULC and the U.S. firm NextEra Energy Resources, LLC all carry on the business of developing, owning, and operating energy generation facilities.

Goshen has entered into a 20 year feed-in-tariff ("FIT") contract with the Ontario Power Authority (the "OPA") in respect of the sale of electricity from the Goshen Wind Energy Centre which is planned to be constructed and operated in Huron County. The purpose of the project submitted to the Board is to connect the Goshen Wind Energy Centre (the "wind farm") to the IESO-controlled grid. The project involves the construction of a 115 kV transmission line (the "Transmission Line") approximately 25 km in length, comprising a single circuit overhead line, as shown on the map in Appendix A.

The Applicant proposed that the Transmission Line will originate at the Substation and terminate at the Breaker that will be built adjacent to the L7S Circuit. Sections of the Transmission Line will be constructed on easements acquired from private land owners and on sections of Municipality-owned right-of-way.

The Board issued a Notice of Application and Written Hearing on April 19, 2013, and

Goshen served and published the Notice as directed. The Board granted intervenor status to the following parties: the Independent Electricity System Operator ("IESO"), and the Corporation of the Municipality of Bluewater ("Bluewater"). Bluewater's request for eligibility to apply for cost awards was denied.

Neither of the intervenors chose to submit intervenor evidence in this proceeding. The Board received one letter of comment from David M. Woodward, a solicitor with Lerner Associates, on behalf of two landowners, Earl Miller and Marilyn Miller, in regard to the proposed form of land agreements proposed by the Applicant. Five persons were granted status as observers in the proceeding.

On August 6, 2013, the record of the proceeding was completed with the Applicant filing its final submission. Subsequently, the Board issued a request for clarification to the Applicant with respect to the lands owned by Earl Miller and Marilyn Miller. The record was reopened for the limited purpose of receiving the Board's letter of request dated September 23, 2013, and the Applicant's reply which was also dated September 23, 2013.

The Board's Jurisdiction in a Leave to Construct Application

The application has been brought under section 92 of the Act. That provision forms part of a series of provisions that both empower and limit the Board in its consideration of this type of application. The Board's power to grant an applicant a leave to construct for transmission facilities arises from subsection 92(1) of the Act which states:

92. (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection.

In discharging its duties in this proceeding, the Board is also bound by the provisions of section 96 of the Act which states:

96. (1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

(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 resources.

As a result of those provisions, certain aspects of any transmission project, such as the environmental impacts which result from the transmission project or the health risks of the transmission project are outside the Board's jurisdiction. All of those matters are determined by the Government of Ontario through the Renewable Energy Approval ("REA") process administered by the Ministry of the Environment and are not matters upon which the Board can express any findings or opinions. The Board also has no jurisdiction regarding the need for, or location of, the generation facilities associated with any transmission application.

The Act also gives the Board responsibilities for certain other matters. Section 97 of the Act states that:

97. In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.

DECISION

The Board approves the application by Goshen Wind, Inc. for an Order granting leave to construct the transmission line and associated facilities as described in the April 3, 2013 application. This approval is subject to the Conditions of Approval attached to the Board's Order as Appendix B.

In considering this application, the Board examined the impact of the Project using the framework established in section 96(2) of the Act and the Board's Filing Requirements

for Transmission and Distribution Applications (the “Filing Requirements”) concerning leave to construct proceedings to arrive at a conclusion with respect to the application under section 92 of the Act. That entailed reviewing the impact of the Project on reliability, quality and the price of electricity, and the promotion of renewable energy sources. Subsequently, the Board reviewed land matters and the proposed forms of agreement to arrive at a conclusion with respect to section 97 of the Act. Lastly, the Board makes its disposition of this application.

EVIDENCE RELATED TO THE BOARD’S FRAMEWORK – SECTIONS 92 and 96

NEED FOR THE PROJECT

The Board’s Filing Guidelines require the Applicant to demonstrate the need for the project. The Applicant submitted that the transmission line and associated facilities are required in order to provide a transmission link between the proposed wind farm to be constructed adjacent to Lake Huron, in Huron County, and the IESO-controlled electricity grid.

Neither the IESO nor Bluewater filed any evidence with respect to Goshen’s application for leave to construct approval pursuant to section 92 of the Act. Therefore, the relevant evidence with respect to the section 92 application is the evidence filed by Goshen, which includes the results of assessments related to the application that were performed by the IESO and Hydro One. The Board concludes that need has been established.

TRANSMISSION SYSTEM- RELIABILITY AND QUALITY OF ELECTRICITY SERVICE

System Impact Assessment Report

System Impact Assessments (“SIA”) are conducted by the IESO to assess whether an applicant's proposed connection with the IESO-controlled grid would have an adverse impact on the reliability of the integrated power system and whether the IESO should issue a notice of approval or disapproval of the proposed connection under Chapter 4, section 6 of the Market Rules. That is a technical process intended to provide a detailed review of the components of the proposal and its impacts on system operating voltage, system operating flexibility and the implications for other connections to deliver and withdraw power from the transmission system.

The IESO filed an SIA Report¹ indicating that the proposed connection of the project, subject to the requirements specified in the IESO report², is expected to have no material adverse impact on the reliability of the integrated power system³. The SIA Report also indicated that it is recommended that a Notification of Conditional Approval for Connection be issued for the project subject to the implementation of the requirements outlined in the IESO report⁴.

Customer Impact Assessment Report

As required by the Board's Filing Requirements for leave to construct proceedings⁵, a Customer Impact Assessment Report ("CIA")⁶ conducted by Hydro One was filed on December 23, 2011. That study was designed to assess the implications of the project on other transmission customers of the transmission system.

The assessment in the filed CIA study⁷ confirmed that the project will not have any adverse impact on the transmission system owned by Hydro One, nor on the transmission customers in the vicinity of the project subject to the requirement that those transmission customers check to ensure that the equipment and grounding system at their stations meet the expected increase in fault level. The Board takes no issue with the CIA study.

Goshen's evidence is that the proposed facilities will be constructed to meet IESO approval. There is no evidence to suggest that the quality of electrical service to Ontario consumers will be negatively impacted and the CIA Final Report supports a conclusion that no negative impacts on the quality of electrical service will occur as a result of this Project.

COST RESPONSIBILITY AND TRANSMISSION RATE IMPACT

Goshen will own, construct and operate the applied-for transmission facilities and will bear the associated project costs, including the costs incurred by the upstream transmitter. There was no evidence that costs associated with the project will be

¹ Exh. H/Tab 1/Sch. 2/Final System Impact Assessment Report, December 23, 2011

² Ibid, pages 2-5

³ Ibid, page 5, first paragraph under the section titled "Notification of Conditional Approval"

⁴ Ibid, page 5, second paragraph under the section titled "Notification of Conditional Approval"

⁵ *Minimum Filing Requirements*, EB-2006-0170, revised June 28, 2012, Chapter 4, pages 17 - 18

⁶ Exh. I/Tab 1/Sch. 2 – CIA Report, issued December 23, 2011

⁷ Ibid, page 7

passed on to consumers through the Uniform Transmission Rates. The Applicant will bear the costs of transmission reinforcement to be carried out by Hydro One on its own L7S 115 kV transmission line and modifications at its 115 kV Seaforth Transmission Station, as noted in the SIA Report⁸.

Consumers will not pay for any portion of the Project through the transmission rates that they pay as part of their electricity bills. The Board therefore finds that there will be no adverse impact on transmission rates.

GOVERNMENT POLICY AND PROMOTION OF RENEWABLE ENERGY SOURCES

Goshen holds a 20-year FIT contract with the OPA in respect of the sale of the electricity to be generated at the wind farm. The project is designed to satisfy Goshen's contractual obligations with the OPA and falls within the larger framework of the *Green Energy and Green Economy Act, 2009*. The need for the proposed transmission line and associated facilities conforms to government policy as expressed in the *Green Energy and Economy Act, 2009*.

The Board finds that there will not be any adverse impacts on consumers with respect to the price, reliability, or quality of electricity service. However, the leave to construct order that is issued with respect to the proposed facilities is conditioned to require the applicant to conform to the requirements set out by the IESO and by Hydro One respectively, in the SIA report and the CIA report.

In accordance with section 96(2) of the Act, the Board is required to consider, in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources. The generation source associated with the Project is a form of renewable energy, and therefore the Board is of the view that approval of this Project would be consistent with overall government policy, as expressed in the *Green Energy and Green Economy Act, 2009*.

⁸ Exh. B/Tab 2/Sch. 1/p1/par. 11; Exh. H/Tab 1/Sch. 2/p. 2/Transmitter Requirement – (2)/ SIA Report, issued by the Independent Electricity System Operator (“IESO”) on December 23, 2011; see also Connection and Cost Recovery Agreement filed July 18, 2013

EVIDENCE RELATED TO THE BOARD'S FRAMEWORK - SECTION 97**THE ROUTE**

The Applicant stated that the right of way corridor will have a typical width between 15 and 30 metres. Easement cross sections, when on private land, will be placed as close to municipal rights-of-way, or the boundary of lot and concessions, as is reasonable. Poles placed within the municipal rights-of-way will be located to minimize impact to adjacent landowners who will not be hosting infrastructure. If poles are placed within the municipal rights-of-way, additional aerial overhang, guy and anchor and temporary construction easements may be acquired from the adjacent landowners under certain circumstances.

In the planning process the Applicant decided that the least environmental and social impact from the overhead transmission line would occur if the transmission line ran along the back side of certain properties and within an existing municipal right-of-way (upper or lower tier municipal road). The Applicant gathered data regarding land use along the entire Corridor and chose to site approximately 15 km of transmission line along the back side of private property, 7.5 km of transmission line on private property that is adjacent to the municipal right-of-way, and 2.5 km of transmission within the municipal right-of-way (i.e. the road allowances).

The Board's Filing Requirements require an applicant to file evidence that it has consulted with the public affected by the Project and Goshen filed evidence to show that it has complied with the Filing Requirements relating to consultation.

FINDINGS RELATIVE TO ROUTING

The Applicant's routing evidence was not challenged by any contrary evidence. The proposed route does not present any adverse impacts from an electrical engineering perspective. The route will minimize the intrusion of the transmission line and associated facilities onto private lands and Goshen has conducted appropriate consultation activities in relation to the route. The Board notes that any environmental impact issues relating to the proposed route are outside the Board's jurisdiction and will be assessed by the Ministry of the Environment under the REA process.

THE FORM OF EASEMENT AGREEMENTS

Goshen has submitted to the Board for approval as to form, a series of land agreements that it has or proposes to enter into with affected landowners. The following agreements have been submitted to the Board:

- Transmission Easement (in Gross)
- License and Option Agreement (Interconnection Facilities)
- Transfer and Grant of Interconnection Easement (in Gross)
- License and Option Agreement (Substation Facilities)
- Transfer and Grant of Substation Easement
- Construction, Maintenance and Access Agreement
- Transmission Easement Option Agreement.

The Applicant stated that it has had extensive discussions regarding the transmission line and the transmission easement with all of the landowners along the Corridor, including adjacent landowners. As a result, the Applicant has acquired rights to approximately 22.5 kilometers of private lands that are required for the transmission line. All affected landowners were offered a standard form transmission easement option agreement.

The Board received one letter of comment from the solicitors for Earl and Marilyn Miller concerning the proposed form of land agreements. They indicate that they have had negotiations with the Applicant that resulted in certain concessions but they felt that those concessions were not fully reflected in the agreements filed with the Board as part of the application. Furthermore, they expressed certain other concerns that remain unresolved as a result of their negotiations with Goshen. On September 23, 2013, the Board clarified the record by determining that the lands owned by Earl Miller and Marilyn Miller would not be affected by the proposed project.

FINDINGS

The Project will be entirely located within Huron County and will affect private as well as municipally-owned lands. In accordance with section 97 of the Act, the Board must be satisfied that Goshen either has or will offer to each owner affected by the proposed route or location of the transmission line an agreement in a form approved by the Board. The only objection came from landowners subsequently identified as not being affected by the proposed land agreement. The Board therefore finds that the forms of the proposed land agreements are acceptable

DISPOSITION

Having considered all of the relevant evidence related to the application, the Board finds that the proposed project will be in the public interest pursuant to section 92 of the Act. The proposed forms of agreement relating to land acquisition that have been submitted by the Applicant are acceptable in accordance with section 97 of the Act. The Board approves the application made pursuant to section 92 of the Act, subject to appropriate conditions.

THE BOARD ORDERS THAT:

1. Pursuant to section 92 of the *Ontario Energy Board Act, 1998* Goshen Wind Energy Centre is granted leave to construct an electricity transmission line and related facilities as described in the application and in accordance with the contents of this Decision and Order, and subject to the Conditions of Approval attached as Appendix B to this Order.
2. Pursuant to section 97 of the *Ontario Energy Board Act, 1998* Goshen Wind Energy Centre is granted approval of the forms of agreement submitted to the Board.
3. Goshen Wind Inc. shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

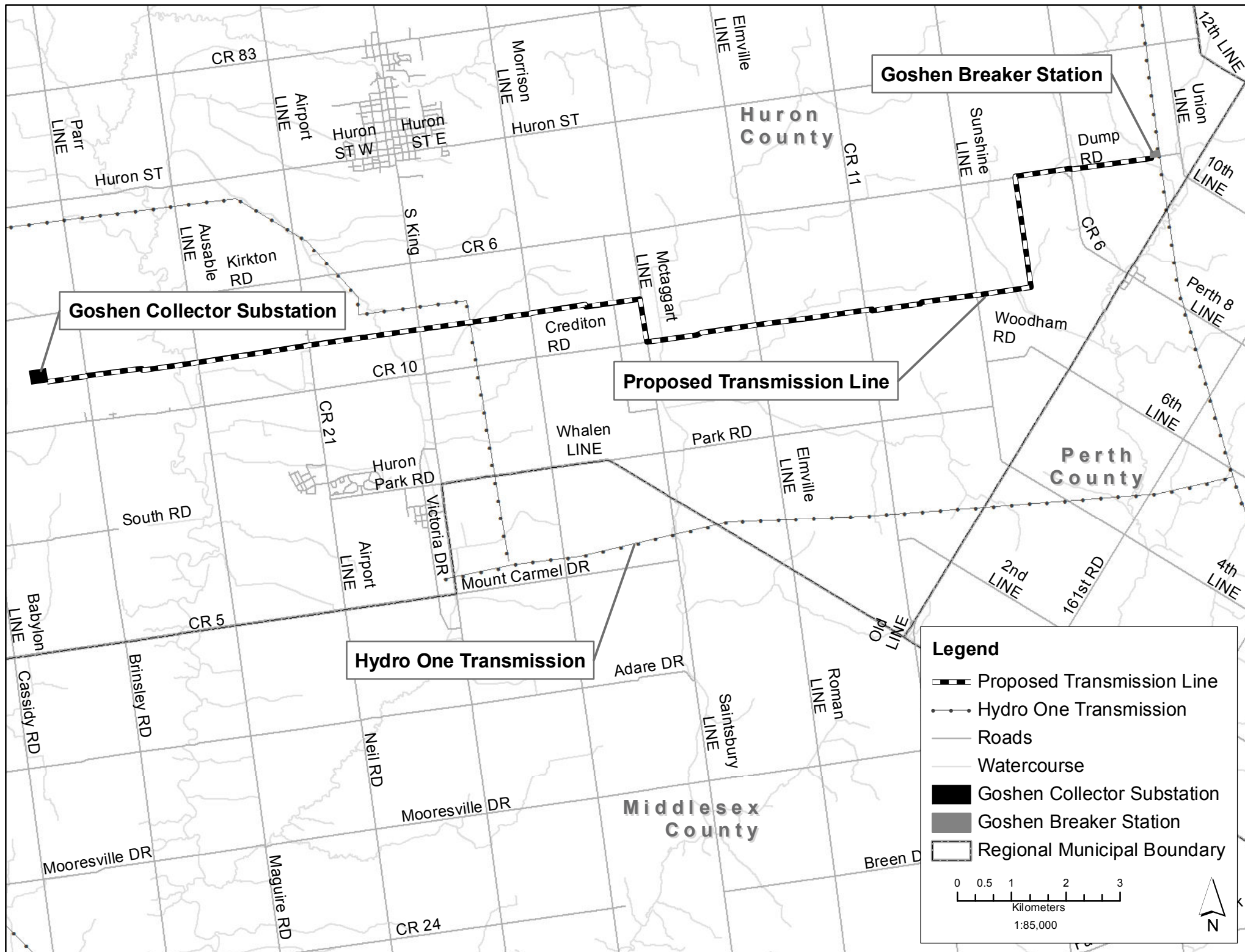
ISSUED at Toronto on October 17, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A
TO DECISION AND ORDER
Goshen Wind, Inc
EB-2013-0096
ROUTING MAP
DATED: October 17, 2013



APPENDIX B
TO DECISION AND ORDER
Goshen Wind, Inc.
EB-2013-0096
CONDITIONS OF APPROVAL
DATED: October 17, 2013

**Conditions of Approval for
Goshen Wind Energy Centre (“Goshen” or the “Applicant”)
Transmission Line and Related Transmission Facilities (the “Project”)
EB-2013-0096**

Note:

The Conditions of Approval attached to the Board’s Decision and Order include references to permits and approvals by other organizations, Crown corporations, or Government Ministries that are prerequisites for the successful completion of the facilities that are the subject of this application. Notwithstanding any such references in these Conditions of Approval, the Board is not responsible for ensuring the implementation or operationalization of any of the requirements enumerated in such permits or approvals or the reports associated therewith even where such permits, approvals or associated reports are required, for any reason, to be filed with the Board.

1. General Requirements

- a. Goshen shall construct the transmission line and associated transmission facilities as defined in the Decision and Order (the “Project”) in accordance with its Leave to Construct application, evidence and undertakings, except as modified by the Board’s Decision and Order and by these Conditions of Approval and in accordance with applicable laws, codes and standards.
- b. Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate October 31, 2014 unless construction of the Project has commenced prior to that date.
- c. Goshen shall comply with the requirements of any Renewable Energy Approval issued in respect of this application and any amendment thereto.
- d. Goshen shall satisfy the Independent Electricity System Operator (“IESO”) requirements as reflected in the System Impact Assessment – Final Addendum Report dated December 23, 2011, and such further and other requirements which may be imposed by the IESO.

e. Goshen shall satisfy the Hydro One Networks Inc. ("Hydro One") requirements as reflected in the Final Customer Impact Assessment Report dated December 23, 2011.

f. Goshen shall advise the Board's designated representative of any proposed material change in the Project, including but not limited to material changes in the proposed route, construction techniques, construction schedule, restoration procedures, or any other material impacts of construction. The Applicant shall not make a material change without prior approval of the Board or its designated representative. In the event of an emergency the Board shall be informed immediately after the fact.

g. Goshen shall obtain and comply with all necessary approvals, permits, licences, certificates and easement rights required to construct, operate and maintain the Project, and shall provide copies of all such written approvals, permits, licences and certificates upon the Board's request.

h. Goshen shall obtain all necessary easements and other instruments relating to individual parcels of land before commencing construction of the Project upon those lands. Goshen shall offer to each affected landowner a form of agreement, as appropriate, that has been given final approval by the Board.

i. Goshen shall comply with the laws of Ontario (including the laws of Canada applicable in Ontario).

2. Project and Communications Requirements

a. The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Electricity Facilities and Infrastructure Applications.

b. Goshen shall designate a person as Project Manager and shall provide the name of the individual to the Board's designated representative. The Project Manager will be responsible for the fulfillment of the Conditions of Approval on the construction site. The Applicant shall provide a copy of the Order and Conditions of Approval to the Project Manager, within ten (10) days of the Board's Final Order being issued.

c. Goshen shall develop, prior to the start of construction, a detailed construction plan. The detailed construction plan shall cover all material construction activities. The Applicant shall submit two (2) copies of the construction plan to the Board's designated representative at least ten (10) days prior to the commencement of construction. The Applicant shall give the Board's designated representative ten (10) days written notice in advance of the commencement of construction.

d. Goshen shall furnish the Board's designated representative with all reasonable assistance needed to ascertain whether the work is being or has been performed in accordance with the Board's Orders.

e. Goshen shall, in conjunction with Hydro One and the IESO, and other parties as required, develop an outage plan for the construction period which shall detail how proposed outages will be managed.

f. Goshen shall furnish the Board's designated representative with two (2) copies of written confirmation of the completion of Project construction. This written confirmation shall be provided within one month of the completion of construction.

3. Construction Impacts - Reporting Requirements

a. Both during and for a period of twelve (12) months after the completion of construction of the Project, Goshen shall maintain a log of all comments and complaints related to construction of the Project. The log shall record the person making the comment or complaint, the time the comment or complaint was received, the substance of each comment or complaint, the actions taken in response to each if any, and the reasons underlying such actions. The Applicant shall file two (2) copies of the log with the Board within fifteen (15) months of the completion of construction of the Project.

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