



EB-2013-0373

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 Trout
Creek Wind Energy LP pursuant to section 74(1)(b) of
the *Ontario Energy Board Act*, 1998 to amend Hydro
One Networks Inc.'s Electricity Distribution Licence ED-
2003-0043.

By delegation, before: David Richmond

DECISION AND ORDER

October 30, 2013

INTRODUCTION

Trout Creek Wind Energy LP ("Trout Creek" or the "Applicant") filed an application dated October 22, 2013 with the Ontario Energy Board (the "Board") under section 74(1)(b) of the *Ontario Energy Board Act*, 1998 (the "Act"). The Applicant seeks an order of the Board to amend section 4(d) of Schedule 3 of Hydro One Network Inc.'s ("Hydro One") electricity distribution licence. Specifically, the Applicant seeks to extend the date in the exemption granted by the Board in its decision in EB-2011-0209 from September 30, 2013 to May 31, 2015. The Board has assigned file number EB-2013-0373 to the application.

The requested amendment is granted.

BACKGROUND

Trout Creek is the current owner of a 10 MW wind power generation project known as Trout Creek Wind Farm (Hydro One Connection No. 12,780) (altogether, the "Project"). The previous owner of the Project entered into a Feed-In Tariff contract with

the Ontario Power Authority with respect to the Project (the "FIT Contract") on April 30, 2010. The FIT Contract was assigned to Trout Creek on August 9, 2013.

Section 6.2.18(a) of the Distribution System Code (the "DSC") states that the connection cost agreement between a generator and a distributor must include a requirement that the generator pay a connection cost deposit ("CCD") equal to 100% of the total estimated allocated cost of connection at the time the connection cost agreement is executed.

In EB-2011-0209, the Board decided to amend Hydro One's distribution licence to reflect an exemption from section 6.2.18(a) of the DSC in relation to the Project and to instead substitute a set of different, specific rules for the Project (the "Rules"). Section 4 of Schedule 3 of Hydro One's distribution licence sets out the Rules and is attached to this Decision and Order as Appendix A.

The following is a key portion of the Board's reasons in EB-2011-0209 for granting the exemption and instituting the Rules:

As the Board stated in its Decision in EB-2011-0067, the objective of the subject DSC provisions is "to eliminate projects that are not being pursued aggressively or reasonably by the proponents" and that "proponents who do not aggressively pursue commercialization of their projects should be removed from the process".

It is the Board's view that Trout Creek's proposed exemption does not compromise this objective. The evidence demonstrates that Trout Creek is reasonably pursuing the Project and that the delays in the development of the Project were largely beyond Trout Creek's control.

Trout Creek is not seeking relief from paying the CCD. It is seeking to align the payment obligations with the regulatory achievements and development of the Project. Trout Creek has shown a financial commitment to the Project. In accordance with the Board's Interim Decision and Order in this proceeding, Trout Creek has paid a deposit of \$200,000 to Hydro One. Trout Creek also stated that it provided \$200,000 to the OPA as an initial security pursuant to the terms of the FIT Contract.

The Applicant confirmed that it relies on outside sources to finance the Project and that it is unable to make the full CCD payment required by Hydro One because of its inability to obtain funding at the current stage of the project development. The evidence demonstrates that

potential lenders require certain milestones to be achieved prior to advancing funds. The Board therefore finds it inappropriate to require Trout Creek to pay a CCD equal to 100% of the total estimated allocated cost of connection at this early stage of the Project.

THE CURRENT APPLICATION

In the current application, the Applicant seeks to extend the date stipulated in section 4(d) of Schedule 3 of Hydro One's licence from September 30, 2013 to May 31, 2015. The Applicant states that "unforeseeable delays in the Ministry of Natural Resources' permitting process, which are beyond the control of the Applicant, have prevented Trout Creek from completing the Renewable Energy Approval ("REA") process". Based on additional information provided by the Applicant's counsel, the Applicant expects that the REA process will be completed by mid-2015.

FINDINGS

Based on the information filed in the application, I find that granting the relief sought by the applicant is in the public interest. In reaching this decision, I was guided by the Board's decision in proceeding EB-2011-0209. It is evident that Trout Creek has shown a financial commitment to the Project. I also accept Trout Creek's statements that the delays in the development of the Project were largely beyond Trout Creek's control. Furthermore, I note that Trout Creek is not seeking relief from paying the CCD. It is seeking to align the payment obligations with the regulatory achievements and development of the Project. I will therefore amend the date in section 4(d) of Schedule 3 of Hydro One's licence to May 31, 2015.

I have decided this matter without a hearing under section 6(4) of the Act.

THE BOARD THEREFORE ORDERS THAT:

1. Schedule 3 of Hydro One Network Inc.'s electricity distribution licence shall be amended by deleting the September 30, 2013 date stipulated in section 4(d) and replacing it with May 31, 2015. Section 4(d) of Schedule 3 of Hydro One Network Inc.'s electricity distribution licence shall now read as follows:

The balance of the total estimated cost, as estimated by Hydro One based upon the best available information, shall be paid by the proponent to Hydro One no later than 30 days after the proponent notifies Hydro One

that it is proceeding to construction. If this notification is not given by May 31, 2015, then the proponent's capacity allocation shall be removed.

DATED at Toronto, October 30, 2013

ONTARIO ENERGY BOARD

Original signed by

David Richmond
Manager, Electricity Facilities and Infrastructure Applications

Appendix A

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4. For the Trout Creek Wind Farm (Hydro One Project #12,780), Hydro One shall be exempted from the current connection cost deposit stipulated in s. 6.2.18(a) of the Distribution System Code (the "DSC") and shall, instead, adhere to the following schedule:
 - (a) \$20,000 per MW of capacity shall be paid by the proponent to Hydro One upon the execution of the Connection Cost Agreement.
 - (b) An additional deposit in the amount of 30% of the total estimated cost, as estimated by Hydro One, less the amount received by Hydro One under paragraph (a) above, shall be paid by the proponent to Hydro One no later than 4 months after the proponent notifies Hydro One that it has completed the Renewable Energy Approval.
 - (c) No later than 180 days after Hydro One receives payment of the amount referenced in paragraph (b) above, Hydro One shall provide to the proponent a construction schedule and a more accurate estimate of the project cost, if such estimate is requested and paid for by the proponent. The payment for the estimate shall be drawn from the deposit to the extent possible.
 - (d) The balance of the total estimated cost, as estimated by Hydro One based upon the best available information, shall be paid by the proponent to Hydro One no later than 30 days after the proponent notifies Hydro One that it is proceeding to construction. If this notification is not given by September 30, 2013, then the proponent's capacity allocation shall be removed.
 - (e) Hydro One and the proponent shall mutually agree upon an in-service date that is no later than 2 years after Hydro One receives the balance referenced in paragraph (d), above, subject to the following: in cases where a transmission upgrade or new transmission facilities are required, Hydro One and the proponent may agree to an in-service date that is later than two years after Hydro One receives the balance referenced in paragraph (d), above.
 - (f) The Expansion Deposit, as stipulated by Section 3.2.20 of the DSC shall be paid to Hydro One at the same time as the payment in paragraph (d).

Notwithstanding the foregoing, if at any time the above-noted payments to Hydro One are insufficient to cover Hydro One's costs as estimated by Hydro One, the proponent shall pay, to Hydro One, additional funding sufficient to meet the shortfall identified by Hydro One, and Hydro One shall be relieved of its obligation to perform such further work until it receives the said additional funding.