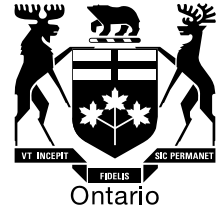


Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2012-0442

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 Varna 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.

BEFORE: Marika Hare
Presiding Member

Ellen Fry
Member

DECISION AND ORDER

November 4, 2013

SUMMARY OF APPLICATION AND PROCEEDING

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”) seeking an order of the Board for leave to construct approximately 23 km of a 115 kV transmission line and associated facilities (including a breaker and substation) (collectively, the “Transmission Facilities”).¹ The Applicant has also applied under section 97 of the Act for an order approving the forms of agreements offered to owners of land affected by the route or location of the Transmission Facilities.

The Transmission Facilities will be located in the municipalities of Bluewater and Huron East and will be used to connect the Bluewater Wind Energy Centre (the “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, to the IESO-controlled grid. A map of the proposed Transmission Facilities is attached as Appendix A of this Decision and Order.

The Board issued a Notice of Application dated December 12, 2012, which was published and served by the Applicant in accordance with the Board’s letter of direction.

The Board granted intervenor status to the following parties: the Independent Electricity System Operator (the “IESO”); Hydro One Networks Inc. (“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”).

The Board received a number of letters of comment from local residents and from members of the Group, stating their opposition to the construction of the Transmission Facilities.

Hydro One, the Group, the Ritzemas, the Oldfields, Jeff Allan, and Board staff filed interrogatories on the Applicant’s evidence. The Applicant provided its responses to all interrogatories. The Board also received intervenor evidence from Hydro One, the Oldfields, the Ritzemas, the Group, and Bluewater. Board staff and the Applicant submitted interrogatories on the evidence filed by the intervenors and responses were

¹ The Transmission Facilities are described in detail in the application at Exhibit B/Tab 2/Schedule 1.

provided by the parties that submitted the evidence. The Applicant submitted additional evidence in response to evidence filed by the Ritzemas and the Oldfields. Pursuant to Procedural Order No. 4, the Applicant filed its argument-in-chief on June 3, 2013. The Board received submissions from the Group, Hydro One, and Board staff. The Applicant filed its reply argument on June 24, 2013.

On June 28, 2013, the Board issued a letter wherein it advised that in light of the ongoing negotiations concerning the issues raised by Hydro One, the Ritzemas and the Oldfields, the Board would defer its Decision on the application until such time as the negotiations had progressed and agreements, if any, had been achieved with the respective parties.

By letter dated September 27, 2013, the Applicant informed the Board that the concerns raised by the Hydro One and the Oldfields had been resolved. With respect to the request of the Ritzemas relating to the relocation of a pole, the Applicant explained why in its view that request cannot be accommodated.

The record of this proceeding is available for review on the Board's website and at the Board's offices in Toronto. The Board has considered the full record but has referred to the record only to the extent necessary to provide context to its findings.

SCOPE OF THIS PROCEEDING

The Board's power to grant an applicant leave to construct electricity transmission facilities is set out in 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 under section 92 the Board is governed 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 sources.

In addition, section 97 of the Act states:

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.

The wording of subsection 96(2) requires the Board to consider only the factors specified in subsection 96(2) in determining whether the proposed Transmission Facilities are in the public interest. While it may be appropriate to consider the concept of public interest from a broader perspective in other contexts, the Act clearly sets out the factors the Board is to consider in the context of this application.

The Board has received letters of comment raising issues concerning the location of the BWEC (i.e. the wind farm), the appropriateness of the Ontario Government's renewable energy policy in general, impacts on health of electro-magnetic frequencies for those in proximity to transmission lines and wind turbines, impacts on livestock and milk production in the area, the appropriate use of agricultural lands and broad environmental matters such as clearing of vegetation and impacts on the natural habitat. Given the focus established by subsection 96(2), these issues are not within the scope of this proceeding. The Board notes that the Applicant must not only comply with the Board's Decision in this proceeding, but must also comply with all other requirements imposed by law and by the agreements it has entered into with third parties.

Some letters of comment also raised issues pertaining to the impact of the Government's renewable energy policy on electricity prices and on the reliability and quality of electricity service.

Concerning the issues of price, reliability and quality, the Board considers these with reference to the application that is the subject of the specific proceeding. As indicated by the Board in EB-2012-0458:

Subsection 96(2) provides that the Board's consideration of price in an application under section 92 is a consideration of any impact on price caused by the project that is the subject of the application, i.e. in this proceeding the connection of the K2 Wind Generation Facility, via the Transmission Facilities, to the provincial transmission system. Accordingly, the price impact of wind generation generally, as referred to in the Residents Group arguments, is not the subject of the Board's consideration in this proceeding.

Similarly, the Board's assessment of the impact on reliability and quality of electricity service in an application under section 92 is conducted in relation to the project that is the subject of the application. Accordingly, the Residents Group's argument that wind generation in general causes reliability and quality problems for consumers in Ontario is a general issue that is not the subject of the Board's consideration in this proceeding.²

INTERESTS OF CONSUMERS WITH RESPECT TO RELIABILITY AND QUALITY OF ELECTRICITY SERVICE

The Applicant filed a System Impact Assessment Report ("SIA") and Customer Impact Assessment Report ("CIA").

The CIA was performed by Hydro One and is intended to assess the potential impacts of the connection of the proposed BVEC via the Transmission Facilities on customers and generators in the vicinity. The CIA states that "with appropriate construction and outage planning, it is expected that the connection of BVEC can be performed with minimal supply impact to the existing transmission customers." The CIA concludes that the fault levels at low voltage and high voltage buses are in accordance with the requirements set out in the Board's Transmission System Code.

The SIA was performed by the IESO and is intended to assess whether the proposed connection to the IESO-controlled electricity grid would have an adverse impact on the quality and reliability of the integrated power system. The SIA gives conditional approval of the connection subject to the requirements set in the SIA.

² Decision and Order, EB-2012-0458, October 8, 2013, pp.5-6

No party objected to the conclusions of the CIA and SIA.

Based on the conclusions of the SIA and CIA, the Board is satisfied that the proposed connection will not adversely impact the interests of consumers with respect to reliability or quality of electrical service, provided the Applicant constructs the Transmission Facility in accordance with the requirements of the SIA and CIA. The Board notes that the Applicant has stated that it will fulfill these requirements.

INTERESTS OF CONSUMERS WITH RESPECT TO PRICES

The Applicant submits that the cost of the Transmission Facilities will be borne by the Applicant and that consequently the proposed Transmission Facilities will not have an adverse impact on the price of electricity in the wholesale market or on transmission rates.

The Applicant has also confirmed that it will bear the cost of the modifications noted in the SIA that Hydro One is required to undertake as a result of the construction of the Transmission Facilities.³

However, the Applicant and Hydro One disagree on what should be the full extent of costs included in the cost of the Transmission Facilities in the context of this proceeding. Hydro One submitted that the Applicant should share the incremental costs of any future service upgrades for existing customers behind Varna's transmission line or any new connections for customers located there. The Applicant submits that these potential costs are outside the scope of the proceeding.

The Board does not consider it necessary to make a determination on whether these potential costs are properly within the scope of this proceeding given that there has been a settlement between the Applicant and Hydro One. The Board also notes that there are currently only 17 customers in this location.

The Board is satisfied that the Transmission Facilities will not have a significant adverse impact on the interests of consumers with respect to prices.

³ Final reply, paragraph 5, p.2

POLICIES OF THE GOVERNMENT ON THE PROMOTION OF THE USE OF RENEWABLE ENERGY SOURCES

The Applicant states that it has been awarded a 20-year power purchase agreement under the Government of Ontario's Feed-in-Tariff program and that the BWEC will add up to 60 MW of renewable energy to the grid each year. The Transmission Facilities are needed to transmit the power that will be generated at the BWEC to the provincial grid.

Based on this information, the Board concludes that the construction of the Transmission Facilities furthers the promotion of the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario.

FORM OF AGREEMENT OFFERED TO LANDOWNERS

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

The Applicant states that it has entered into agreements with landowners for the land required for the breaker and the substation. The Applicant has filed these forms of agreement.

With respect to the transmission line, which will be partly located on private lands, the Applicant submitted that all directly affected landowners have executed an easement agreement with the Applicant.

With respect to adjacent landowners, the Applicant indicates that temporary easement agreements may be required depending on the extent of the construction activity.

The Applicant states that all landowners were offered one of two standard form of easement option agreements, with the Applicant's proposed form of easement agreement attached (each an "Option Agreement"). The two forms of Option Agreement were filed with the Board.

No party raised any specific issues with the easement agreements in its final submissions.

The Applicant has submitted that there is an issue between the Applicant and the Ritzemas concerning pole placement that has not been completely resolved. However, given the Applicant's submission that this pole placement will now be on municipal right-of-way lands, there is no need for the Board to consider approval of the form of the agreement in this case.

Taking the above factors into account, the Board approves the forms of agreements submitted by the Applicant. The Board notes that its approval in this context does not necessarily imply that the Board would or would not approve these forms of agreement in any future proceedings.

BOARD DECISION

The Board finds that the construction of the Transmission Facilities, as described in Varna Wind, Inc.'s application and submissions, is in the public interest as contemplated by subsection 96 of the Act. The Board also grants its approval pursuant to section 97 of the Act for the form of agreements offered to and executed by affected landowners, as submitted by the Applicant.

The Board notes that its Decision is premised, among other things, on fulfillment of the commitments by the Applicant outlined in its submissions, which include, among other things, the Applicant's commitments to fulfill the requirements of the CIA and SIA Reports, and to pay costs as outlined in this Decision.

THE BOARD ORDERS THAT:

1. Pursuant to section 92 of the Act, the Board grants Varna Wind, Inc. leave to construct the Transmission Facilities in accordance with the Board's Decision in this proceeding. The granting of this leave to construct is conditional on Varna Wind, Inc. commencing construction within 12 months of the date of the Board's Decision.
2. Parties that were granted cost eligibility shall file their cost claims with the Board, and deliver a copy to the Applicant, by **November 18, 2013**. The cost claims must be in accordance with the Board's *Practice Direction on Cost Awards*.

3. If the Applicant objects to any cost claim, it must file its objection with the Board, and deliver a copy of the objection to the party whose cost claim is being disputed, by **November 27, 2013**.
4. Any party whose cost claim is disputed must file any reply submission with the Board, and provide a copy of the reply submission to the Applicant, by **December 6, 2013**.
5. The Applicant shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote the file number EB-2012-0442, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties are to use the document naming conventions and document submission standards outlined in the RESS Document Guidelines found at www.ontarioenergyboard.ca. If the web portal is not available parties may e-mail your document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and received no later than 4:45 p.m. on the required date.

ADDRESS:

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

Tel: 1-877-632-2727 (toll free)
Fax: 416-440-7656

ISSUED at Toronto, November 4, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A
TO DECISION AND ORDER
Varna Wind, Inc.
EB-2012-0442
LOCATION MAP
DATED: November 4, 2013

