



EB-2012-0423

IN THE MATTER OF the *Ontario Energy Board Act*, 1998,
S.O. 1998, c.15 (Schedule B) (the “Act”);

AND IN THE MATTER OF an application by TransAlta
Generation Partnership (“TransAlta”) for an electricity
distribution licence under section 60 of the Act and a
request in the alternative for confirmation of a distribution
licence exemption.

BEFORE: Emad Elsayed
Presiding Member

Ellen Fry
Member

DECISION
December 5, 2013

Background

TransAlta Generation Partnership (“TransAlta”) is a Board-licensed generator. On October 29, 2012, TransAlta filed an application with the Board seeking an electricity distribution licence under section 60 of the Act or, in the alternative, confirmation that TransAlta is, pursuant to section 4.0.1 of Ontario Regulation 161/99, exempt from requiring a distributor licence.

At TransAlta’s request, the application was held in abeyance from April 11, 2013 until it was further amended by TransAlta on November 20, 2013.

The Board assigned file number EB-2012-0423 to this proceeding.

The Application

TransAlta currently owns and operates the Sarnia Regional Cogeneration Plant in Sarnia, Ontario (the “SRCP site”). In the application, as originally filed, TransAlta advised that it wished to supply power to a new load on the SRCP site and that it wished to construct distribution facilities from the SRCP site to supply potential new and existing load at a neighbouring site immediately to the north, owned by LANXESS Inc. (the “LANXESS site”).

On March 21, 2013, the Board issued a Notice of Request for Confirmation of Distribution Licence Exemption (the “Notice”). The Notice indicated the Board’s intention to dispose of this proceeding without a hearing pursuant to section 21(4)(a) of the Act and stated that any objections to proceeding without a hearing or requests that the Board hold a hearing in this matter, be filed in writing by April 10, 2013.

The Board required TransAlta to post the Notice on its website as well as to send the Notice to the following parties: LANXESS Inc., Bluewater Power Distribution Corporation (“Bluewater”), The Corporation of the City of Sarnia, Hydro One Networks Inc., Bioamber Inc., and CSX Transportation. TransAlta was also required to serve persons that hold registered interests in property neighbouring the SRCP site and the LANXESS site.

On April 10, 2013, Bluewater filed a letter requesting a hearing on TransAlta’s application. TransAlta filed a letter on April 11, 2013 asking that the Board delay issuing any procedural orders to advance the hearing process in order to provide TransAlta and Bluewater with an opportunity to resolve their issues. The application was placed in abeyance as requested, and, in accordance with further requests by TransAlta, remained in abeyance until November 2013.

Bluewater filed a letter on November 15, 2013 notifying the Board that it was withdrawing its request for a hearing provided that the Board’s determination of the threshold question (as to whether TransAlta requires a distribution licence) is restricted to the LANXESS site.

On November 20, 2013, TransAlta filed a letter with the Board amending the application by advising that TransAlta is applying for a determination by the Board of the threshold

question only with respect to the supply of power to the LANXESS site. In other words, TransAlta was withdrawing its application to make a determination on the threshold question with respect to the supply of power to a load on the SRCP site. TransAlta filed another letter on November 26, 2013 confirming that it is also no longer applying to the Board for a distribution licence with respect to the supply of power to the SRCP site.

Legal Provisions

Clause 57(a) of the Act provides that a person wishing to own or operate a distribution system in Ontario must first obtain a licence to do so from the Board. This general requirement is, however, subject to certain exemptions. The exemptions are set out in Ontario Regulation 161/99, "Definitions and Exemptions" ("O.Reg. 161/99").

The section of O.Reg 161/99 relevant to this proceeding is s. 4.0.1 (1) (a) 3, which provides as follows:

4.0.1 (1) Clause 57 (a)...of the Act [does] not apply to a distributor who distributes electricity for a price no greater than that required to recover all reasonable costs,

(a) with respect to a distribution system owned or operated by the distributor that is entirely located on land on which one or more of the following types of building or facilities is also located:

...

3. An industrial, commercial or office building.

Submissions of TransAlta

TransAlta submits that it should be exempted from the requirement to hold a distribution licence in order to supply existing or potential new load at the LANXESS site because:

- The distribution facilities would be located on land on which only industrial buildings are located. Moreover, there is no requirement in subsection 4.0.1 of O.Reg 161/99 that the land be a single parcel or that the buildings be on land owned by a single (or related) entities; and

- TransAlta will not be seeking to charge either LANXESS Inc. or any new load on the LANXESS site for distribution.

Board Findings

The application and evidence filed by TransAlta indicate that its proposed distribution system will be located on the SRCP site, on which a cogeneration plant is located, and on the LANXESS site, on which two substations are located.

While the Act does not contain a definition for “industrial building”, the Board agrees with the submissions made by TransAlta that the buildings located on the lands where the distribution system is to be located are industrial, as the word “industrial” is commonly understood.

Accordingly, the Board finds that TransAlta may operate a distribution system to supply electricity from its SRCP site to the LANXESS site without a distribution licence as long as TransAlta distributes the electricity for a price no greater than that required to recover all reasonable costs.

DATED at Toronto, December 5, 2013

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary