

**facsimile**

Number of Pages (including cover page): 5

IF YOU DO NOT RECEIVE ALL PAGES OF THIS FAX, PLEASE CALL 416.865.7173.

Date:	March 7, 2014	File:	EB-2013-0424
To:	Board Secretary	Fax:	416-440-7656
Firm:	Ontario Energy Board	Phone:	416-481-1967
City:	Toronto		
Copy To:	Charles Keizer	Fax:	416-865-7380
Firm:	Torys LLP	Phone:	416-865-7512
City:	Toronto		
From:	Mike Richmond	Phone:	416.865.7832
		E-mail:	mike.richmond@mcmillan.ca
Secretary:	Luphemia Tsang	Phone:	416.865.7184

This fax is confidential and is intended only for the person(s) named above. Its contents may also be protected by privilege, and all rights to privilege are expressly claimed and not waived. If you have received this fax in error, please call us immediately (collect, if necessary), destroy the entire fax and permanently delete any electronic versions. If this fax is not intended for you, any reading, use, copying or disclosure of this fax is strictly prohibited.

Comments:

Please see attached re EB-2013-0424.



Reply to the Attention of Mike Richmond
Direct Line 416.865.7832
Email Address mike.richmond@mcmillan.ca
Our File No. 211923
Date March 7, 2014

March 7, 2014

BY COURIER, EMAIL AND FAX

EB-2013-0424

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON
M4P 1E4

Dear Ms. Walli:

**Re: Letter of Intervention from Union Gas Limited
EB-2013-0424 (Application for Amendment to Electricity Generator License
EG-2009-2013)**

We are counsel to Greenfield South Power Corporation ("**Greenfield South**").

We wish to respond on behalf of Greenfield South to the letter to the Ontario Energy Board (the "**Board**") from Torys LLP on behalf of Union Gas Limited ("**Union**") dated February 28, 2014, seeking to intervene in Greenfield South's application for an amendment to its Electricity Generation License (EB-2013-0424) (the "**License Amendment Application**").

Greenfield South is well aware of its legal obligations with respect to the development and construction and operation of the interconnection facilities at its Green Electron Power Project in the Township of St. Clair (the "**Project**") and Greenfield South's current and proposed arrangements in this regard are in full compliance with all such obligations.

Greenfield South believes that Union is disappointed that Greenfield South, acting in good faith and in the best interests of Greenfield South and the Project, might proceed with Vector rather than Union. Greenfield South believes that Union's interjection is only an attempt to create obstacles and delay for Greenfield South by trying to manipulate the Board into hearing interventions in a matter which is not before the Board and for which no application has been filed with the Board, in the hope that the resulting regulatory delay will force Greenfield South to concede to Union's demand that it be retained to do the work.



March 7, 2014

Page 2

Greenfield South believes that the attempt by Union to involve the Board in this matter constitutes an abuse of the Board's procedures. In particular:

1. Greenfield South's License Amendment Application, submitted December 9, 2013, is for an amendment to its Electricity Generator License (EG-2009-0023) to reflect the new name and location for the Project. As indicated by Greenfield South in its submission, the License Amendment can be dealt with by the Board without a hearing. The License Amendment is not an application for leave to construct a pipeline, nor is it an application for a certificate of public convenience and necessity for the construction of gas works under the *Municipal Franchises Act* ("MFA"). Union's attempt to intervene and prolong the process based on factors unrelated to electricity generation, the *Ontario Energy Board Act* (the "OEB Act") or the electricity generation license itself is not appropriate. The application for an amendment to Schedule 1 of the Electricity Generation License does not deal with gas distribution or pipeline construction. As such, Union has no legitimate interest in the application which is actually before the Board.
2. Union comments that Greenfield South may need to apply to the Board for a Certificate of Public Convenience and Necessity, pursuant to section 8 of the *Municipal Franchises Act*. As indicated above, Greenfield South is fully aware of its legal obligations, and does not believe that such an application under the *Municipal Franchises Act* is required. We note that the Vector pipeline already crosses our site property and that any and all gas works, including any connection with this line, would be located entirely on our private property and would not involve any crossing of any other pipeline, easement, other infrastructure, public lands or third party private lands.

Union bases its assertion on its "understanding" that Greenfield South is "going to pursue" a by-pass of Union's distribution system and that "it appears as though Greenfield South will need to apply" for a Certificate under the MFA. This is all speculation, and none of this is before the Board in the present License Amendment Application.

In implementing its fuel supply plans for the Project, Greenfield South has and will continue to assess its legal obligations. If the plans for the Project change such that Greenfield South determines that a Certificate under the MFA would be required, then at that time Greenfield South will apply for such a Certificate, and Union may then wish to intervene in that application if appropriate. But any such application for a Certificate under the MFA would be distinct from the present application for an amendment to the existing Electricity Generation License to reflect the new name and location for the Project. Union's attempt to argue that the current application presently before the Board under the OEB Act to amend an Electricity Generation License must be considered in the same hearing process as a non-existent application under the MFA represents a misunderstanding or misapplication of the Board's procedures.

While we do not dispute that the OEB has the power to consolidate two applications into a single process, the fact is that there is only one application before the Board at this time.



March 7, 2014

Page 3

There is no second application to consolidate, and based on current plans and designs for the Project, which is located entirely within the Greenfield South property, no second application is expected. While it is within the Board's mandate to determine the methodology and, to some extent, the timing for hearing matters that are properly before the Board, it is up to each applicant to bring an application if and when required. It is certainly not within Union's power to place a Certificate application before the Board on Greenfield South's or Vector's behalf, yet that is what Union is attempting to do, because Union knows that it cannot legitimately claim to have a "substantial interest" and therefore intervenor status in an electricity license amendment application. Union therefore wishes to expand the scope to introduce a non-existent gas works application for which it could more convincingly claim to have an interest. The only application properly before the Board at this time, however, is the License Amendment Application EB -2013-0424 brought under Section 74(1) of the OEB Act. Union has no interest in this application as actually filed. It relates to electricity generation, not to the distribution of gas or the construction of works for the supply of gas, and the license has already been issued by the Board – the application is simply to amend the name and location.

3. With respect to Union's comment regarding an application under Section 90 of the OEB Act, again, Greenfield South is aware of the requirements under those provisions and can advise that based on the proposed work to be completed, no such application is required. If the plans for the facility change and an application under Section 90 becomes necessary at some point in the future, Greenfield South will submit such an application at that time – when it is appropriate and required for the Project, not when it is most convenient for Union to intervene.

Greenfield South believes that the matters raised by Union are without merit and that they are being raised solely in an attempt to create obstacles and delay, in order to interfere with Greenfield South's ability to satisfy its contractual obligations to the OPA. This course of action risks inducing a breach of the contractual obligations with the OPA or other contracts of Greenfield South, and effectively hold out the withdrawal of Union's baseless interference in Greenfield South's Electricity Generator License amendment application in exchange for a contract for the work from Greenfield South in favour of Union.

Greenfield South hopes that the Board will conclude and confirm that based on the current facts and arrangements, Union's attempt to delay the Electricity Generation License amendment application which is currently before the Board on the basis that Union wishes to intervene in a by-pass or Certificate application which does not exist, is without merit. Union has attempted to demonstrate an interest in an application which has not been brought (and which Greenfield South currently has no plans to bring). Union has not demonstrated a substantial interest in the License Amendment Application for which Union has filed its letter of intervention, and therefore has not satisfied the requirement set out in Rule 23.02 of the OEB Rules of Practice and Procedure.

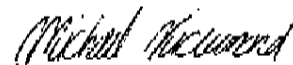


March 7, 2014
Page 4

Greenfield South therefore objects to Union's request for intervenor status, and further urges the Board to limit the time for Union to respond to this objection under Rule 23.08 so as not to permit Union to manipulate the OEB's procedures in order to achieve its ultimate goal of delaying the Project so as to gain leverage in commercial gas supply negotiations.

As an aside, Greenfield South would appreciate receiving some indication from the Board as to when it might expect the issuance of either a decision or a procedural order in respect of the License Amendment Application. The application, which is for a simple amendment to an existing license, was submitted almost 3 months ago and to date there have been no communications from the Board or any indication of the process to be followed.

Yours truly,



Mike Richmond

cc (by email): Charles Keizer, Torys LLP
Hubert Vogt, Greenfield South Power Corporation
Steve Baker, Union Gas Limited
Matthew Malinowski, Vector Pipeline
Colin Anderson, Ontario Power Authority
Mary Anne Aldred, Ontario Energy Board
Lynn Anderson, Ontario Energy Board
Vince Mazzone, Ontario Energy Board