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April 7, 2014

VIA RESS and Courier

Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto, ON M4P 1E4

Attention: Kirsten Walli
Board Secretary

Dear Ms. Walli:

Re: Niagara Region Wind Corporation Leave to Construct Application
Board File No. EB-2013-0203
Reply Submissions

We are counsel to Niagara Region Wind Corporation (the "Applicant") in the above-noted proceeding. Please find enclosed the Applicant's Reply Submissions.

Sincerely,

Signed in the original

George Vegh
Enclosure

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sch. B, as amended;

AND IN THE MATTER OF an application by Niagara Region Wind Corporation for an order under section 92 and subsection 96(2) of the OEB Act granting leave to construct an electricity transmission line and related facilities.

APPLICANT'S REPLY SUBMISSIONS

INTRODUCTION

1. Niagara Region Wind Corporation (the “**Applicant**”) filed an application with the Ontario Energy Board (the “**Board**”) on May 7, 2013 under sections 92 and 96(2) of the *Ontario Energy Board Act, 1998* (the “**OEB Act**”). The Applicant has applied to the Board for leave to construct an electricity transmission line and related facilities (collectively, the “**Facility**”).
2. These submissions are made pursuant to Procedural Order No. 3 and are in reply to submissions filed by Hydro One Networks Inc. (“**HONI**”) and the Township of West Lincoln (“**West Lincoln**”) on March 31, 2014. Board staff indicated that staff would not file final submissions in this proceeding.
3. The submissions made by HONI and West Lincoln are considered in turn below.

HONI SUBMISSIONS

4. In its submissions, HONI argues that there is a need for generators who are also building a transmission facility, such as the Applicant, to share certain responsibilities and incremental costs associated with the distribution service provided by the distributor who services customers residing on properties adjacent to a generator’s transmission line.¹
5. As HONI indicates in its submissions,² the Applicant has been working with HONI to resolve and mitigate HONI’s concerns through an agreement between the parties. HONI has requested that the Board include, in its Conditions of Approval, “the filing in confidence of a signed agreement between the two parties no later than the construction commencement of the proposed facilities.”³ The Applicant is agreeable to this request.
6. The Applicant cannot, however, agree to the alternative suggestion noted by HONI in its submission⁴, namely that the Board defer its decision in this proceeding until it has been notified that an agreement between the two parties has been reached. For commercial reasons, the Applicant will not be in a position to execute the agreement with HONI until the Applicant is close to the start of construction of the facility. Moreover, given the significant delays which have occurred in this proceeding, any further delay is not

¹ HONI submissions filed March 31, 2014 at page 1.

² HONI submissions filed March 31, 2014 at page 3.

³ HONI submissions filed March 31, 2014 at page 3.

⁴ HONI submissions filed March 31, 2014 at page 3.

acceptable to the Applicant. The Applicant submits that the addition of a condition of approval regarding the filing in confidence of an agreement between the parties by the time of commencement of construction is adequate to ensure that this matter is resolved.

WEST LINCOLN SUBMISSIONS

7. In its submissions, West Lincoln states that i) the Applicant did not consider adverse impacts on West Lincoln and the town's future needs in relation to growth; and ii) alternative routes considered by the Applicant "should have been evaluated as to whether the price, reliability and quality of electricity will be maintained, and whether or not the approval of the facility is consistent with the promotion of the use of renewable energy resources in a manner consistent with the policies of the Government of Ontario."
8. Each of West Lincoln's submissions is considered below.
9. In respect of West Lincoln's submission that the Applicant did not consider the town's future needs in relation to growth, the Applicant observes that the Board has clearly stated that this issue is not within the scope of this proceeding. Indeed, in Procedural Order No. 1, the Board considered West Lincoln's stated grounds for intervention in this proceeding, noting:

The Township also states it has significant concerns with respect to the impact of the proposed transmission line on the Smithville Urban Area and what it considered to be a lack of proper consideration of socioeconomic criteria in that regard.⁵

10. The Board subsequently concluded as follows:

The Township's cited concerns with respect to planning issues and the application of socioeconomic criteria also do not fall within the scope of this proceeding as established by the Act. Accordingly, the Board will not permit the Township to make submissions on these issues as an intervenor.⁶

11. The Board therefore determined at the outset of this proceeding that West Lincoln's future development plans are not within the scope of this proceeding. In addition, in its

⁵ Procedural Order No. 1 at page 4.

⁶ Procedural Order No. 1 at page 6.

Decision on Threshold Questions and Procedural Order No. 2 (the “**Preliminary Issues Decision**”), the Board further concluded (emphasis added):

Where the Board is called upon to give effect to the concerns of the municipality in relation to the route or location of a proposed transmission or distribution line under section 92 of the Act **the Board may consider the municipality’s concerns only to the extent that those concerns raise an issue that is cognizable by the Board under subsection 96(2) of the Act.** All other matters relating to route or location would fall to be determined by the Minister of the Environment under the Environmental [Protection] Act, or the common law.⁷

12. The Board thus provided further guidance in the Preliminary Issues Decision, indicating that the Board can only consider a municipality’s concerns if these concerns raise an issue that relates to the Board’s public interest criteria under section 96(2) of the *OEB Act*. West Lincoln has not raised any issues which fall within these criteria.
13. As its second point, West Lincoln states that “alternative routes should have been evaluated as to whether the price, reliability and quality of electricity will be maintained, and whether or not the approval of the facility is consistent with the promotion of the use of renewable energy resources in a manner consistent with the policies of the Government of Ontario.”
14. If West Lincoln is suggesting that the Applicant should have conducted its study of alternative routes based on the criteria set out in section 96(2) of the *OEB Act*, the Applicant submits that there is no basis for this proposition.
15. The purpose of section 96(2) of the *OEB Act* is to set out the criteria which the Board is to consider in deciding whether to grant leave to construct under section 92 of the *OEB Act*. There is no basis for applying the section 96(2) criteria in a route selection study.
16. As indicated in its pre-filed evidence and noted in argument-in-chief, the Applicant considered a variety of factors in choosing the proposed route, and explained in its pre-filed evidence why the proposed route was chosen. Although the Board’s filing guidelines for leave to construct applications require that an Applicant explain its rationale for selecting a proposed project as opposed to any alternative,⁸ the Board’s guidelines are clear that the Board will subsequently “either approve or not approve the

⁷ Preliminary Issues Decision, page 12, as corrected by errata letter issued by the Board on April 7, 2014.

⁸ Ontario Energy Board, Chapter 4 of the Filing Requirements for Electricity Transmission and Distribution Applications, page 7.

proposed project (i.e. the preferred option). It will not choose a solution from among the alternative options.”⁹

17. The Board thus considers the public interest criteria under s. 96(2) of the *OEB Act* for the purpose of determining whether or not to grant an applicant leave to construct the proposed project, as set out in an applicant's application and pre-filed evidence. The Board does not choose between alternate routes. It follows, therefore, that the Board would not be assisted by an applicant's use of the section 96(2) criteria in a route selection study.

CONCLUSION

18. The Applicant has shown, in its evidence, replies to interrogatories and argument-in-chief in this proceeding, that this Application has met the criteria under 96(2), and that the construction of the Facility is in the public interest. The price, reliability and quality of electricity will be maintained, and the approval of the Facility is consistent with the promotion of the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario.
19. The Applicant therefore requests that the Board approve this Application as proposed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

⁹ Ontario Energy Board, Chapter 4 of the Filing Requirements for Electricity Transmission and Distribution Applications, pages 10-11.