



EB-2013-0442

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 wpd Sumac Ridge Incorporated for an Order or Orders pursuant to section 41(9) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A establishing a location for the applicant's distribution facilities on public road allowances owned by the Municipality of Kawartha Lakes, Ontario, as set out in this application.

PROCEDURAL ORDER NO. 1

August 7, 2014

wpd Sumac Ridge Incorporated (the "Applicant") filed an application dated December 20, 2013 with the Ontario Energy Board (the "Board"), under subsection 41(9) of the *Electricity Act, 1998*, c.15, Schedule A (the "Electricity Act") for an order or orders establishing a location of certain distribution facilities to run above a portion of Gray Road and to cross beneath Wild Turkey Road, as described in Exhibit C, Tab 1, Schedule 1 of the application.

The Board issued its Notice of Application and Written Hearing (the "Notice") and Letter of Direction to the Applicant on January 27, 2014. The Applicant submitted an affidavit confirming service of the Board's Notice on May 6, 2014.

The Board received requests for intervenor status from Elizabeth Salmon and Brent Whetung. Ms. Salmon stated that her interests relate to the location of facilities along Gray Road, as it is located adjacent to her farm. Ms. Salmon also submitted that the application was premature in light of the ongoing appeal proceedings in relation to the Renewable Energy Approval ("REA") by the Ministry of the Environment. Ms. Salmon sought eligibility to apply for a cost award. Mr. Whetung submitted that as a First Nation person his Treaty Rights are directly affected by the project. Mr. Whetung also stated that the Applicant has not consulted with Curve Lake First Nation and requested that the Board cease the processing of the application until meaningful consultation has occurred.

The Applicant objected stating that the requests were premised on matters that are outside the scope of the Board's jurisdiction. With respect to Ms. Salmon's submission that the application was premature, the Applicant submitted that the Electricity Act does not require prior REA approval. With respect to Mr. Whetung's request, the Applicant submitted that Mr. Whetung had not established that he is authorized to participate on behalf of the Curve Lake First Nation, his letter of intervention does not comply with the Rule in the Board's *Rules of Practice and Procedure* that requires that every intervention request contain a description of the intervenor and its members and that Mr. Whetung has not expressed any interest that falls within the Board's jurisdiction under section 41(9). The Applicant submitted the Board should deny Mr. Whetung's request or require Mr. Whetung to file additional information in keeping with Rule 22.03 of the Board's *Rules of Practice and Procedure*.

The Board accepts the request for intervenor status from Elisabeth Salmon given that her farm is adjacent to a road allowance that is the subject of the application. However, the Board notes that the Board's authority under section 41 (9) of the Electricity Act is to determine the location that the distribution facilities will occupy within the road allowances. The Board's authority does not extend to deciding whether the distribution facilities should be permitted to be located within the road allowance. Ms. Salmon should focus her submissions and any evidence accordingly.

With respect to Mr. Whetung's request, the Board has determined that it needs additional information from Mr. Whetung before it can make a decision on whether or not to grant him intervenor status. **If Mr. Whetung still wishes to intervene, the Board requires that Mr. Whetung file a written response to the following questions by August 18, 2014.**

Question 1: Mr. Whetung states that his Treaty rights are directly affected by the wpd Sumac Ridge project and that the project is within Treaty 20 area in Ontario. It is unclear to the Board whether Mr. Whetung is saying that the Sumac Ridge generation facility is within Treaty Area 20 or whether he is saying that the road allowances that are the subject of this application are within Treaty Area 20, i.e. Gray Road and Wild Turkey Road, as described in Exhibit C, Tab 1, Schedule 1 of the application. Mr. Whetung is requested to clarify this.

Question 2: What right(s) in the Treaty is impacted by the location of the facility in the road allowance?

Letters of Comment

The Board has also received a number of letters of comment in relation to this application. Some of these letters raised concerns regarding the accuracy of the Board's Notice and regarding the duration for submitting letters of comment. These letters submit that the Board's Notice which states that the facilities along Gray Road are to be located aboveground is inconsistent with the project details filed as part of the REA review where it is stated that the facilities along Gray Road are to be located underground.

The Board notes that the Applicant has confirmed in its e-mail dated May 15, 2014, that the proposed facilities along Gray Road are to be located aboveground. The Applicant also confirmed that the Notice was posted on its website on March 27, 2014. Therefore the Board is satisfied that its Notice is accurate.

With respect to the concern regarding the period for providing comments, the Board notes that comments in this case were due 30 days from the date of publication or service of Notice.

In this case publication of the Notice on the Applicant's website occurred on March 27, 2014 and therefore comments were due by April 28, 2014. All letters of comment that were submitted have been accepted on the record of the proceeding.

City Of Kawartha Lakes

The City of Kawartha Lakes (the "City") submitted a letter dated April 30, 2014, requesting this application be set aside. The City submits that it is committed to processing a municipal consent application by the Applicant but notes that parties have agreed that final approval will not be granted until the Applicant has received Ministry of Transportation approval, appeals regarding the REA approval have been resolved and an agreement similar to a Franchise Agreement is executed. Further, the City submits that the Applicant cannot be considered a distributor under the Electricity Act until the project receives REA approval.

The Applicant disagrees with the City's position. Concerning its standing as a distributor under the Electricity Act the Applicant refers to the Board's Decision in EB-2013-0233, where the Board confirmed that the Electricity Act does not require an applicant to obtain any regulatory approvals prior to seeking and obtaining relief under section 41(9).

The Board will not defer the hearing of this application to await the outcome of the other processes, as has been requested by the City. The Board agrees with the Applicant that the Electricity Act does not require an applicant to obtain any applicable regulatory approval, including REA approval, prior to obtaining approval under section 41(9).

The Board will grant intervenor status to the City should it indicate to the Board that it wishes to intervene in this proceeding. The City's request for intervenor status must be filed with the Board by August 18, 2014.

Form of Hearing

The Applicant has requested a written hearing, noting that its request is consistent with the Board's practice of convening a written hearing for such applications. Mr. Whetung has requested that the Board convene an oral hearing and that the hearing be held in Curve Lake First Nation. The Applicant objected to the request for an oral hearing noting that Mr. Whetung has not provided a reason why the Board should depart from its standard practice.

If a party objects to a written hearing, it must provide written reasons why an oral hearing is necessary, by August 18, 2014.

THE BOARD ORDERS THAT:

1. Any party that objects to a written hearing may file a submission with the Board and serve a copy on the Applicant by **August 18, 2014**.
2. Board staff and intervenors shall request any relevant information and documentation from the Applicant that is in addition to the evidence already filed, by written interrogatories filed with the Board and served on all parties on or before **September 8, 2014**.
3. The Applicant shall file with the Board complete written responses to all interrogatories and deliver them to all intervenors on or before **September 18, 2014**.
4. Board staff and intervenors shall, on or before **September 23, 2014**, indicate if it is their intention to file evidence. If a party indicates an intention to file evidence, the Board will issue further procedural orders revising the schedule that is set out below.
5. The Applicant shall file argument-in-chief, if any, with the Board and deliver it to all intervenors on or before **September 30, 2014**.

6. Board staff and intervenors shall file their submissions, if any, with the Board, and deliver to the Applicant on or before **October 7, 2014**.
7. If the Applicant wishes to respond to any of the submissions, the response must be filed with the Board and delivered to all intervenors by **October 14, 2014**.

All filings to the Board must quote the file number, EB-2013-0442, 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. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available you may email your document to the address below.

All communications should be directed to the attention of the Board Secretary at the address below, and be 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

E-mail: Boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

DATED at Toronto, August 7, 2014

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A

PROCEDURAL ORDER NO. 1

APPLICANT AND LIST OF INTERVENORS

BOARD FILE NO. EB-2013-0442

DATED August 7, 2014

**wpd Sumac Ridge Incorporated
EB-2013-0442**

APPLICANT & LIST OF INTERVENORS

August 07, 2014

APPLICANT

Rep. and Address for Service

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INTERVENORS

Rep. and Address for Service

**wpd Sumac Ridge Incorporated
EB-2013-0442**

APPLICANT & LIST OF INTERVENORS

- 2 -

August 07, 2014

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