



EB-2006-0052

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 Sithe Global Power Goreway ULC (formerly Sithe Energies Canadian Development, Ltd. and subsequently Sithe Canada Ltd.) for an order or orders granting leave to construct an electricity transmission line, make an interconnection with the transmission system owned by Hydro One Networks Inc., and construct a transmission line over a highway and other utility lines, all in the City of Brampton;

AND IN THE MATTER OF a Notice of Proposal pursuant to section 81 of the *Ontario Energy Board Act, 1998* by Sithe Energies Canadian Development, Ltd., a generator, to construct a transmission system;

AND IN THE MATTER OF a Motion by Sithe Global Power Goreway ULC to vary the Order issued by the Ontario Energy Board dated September 9, 2002, as varied by the Vary Order dated November 20, 2002, the Decision and Order issued October 31, 2003, the Vary Order dated September 1, 2005 and the Vary Order dated December 5, 2005, in respect of a change in the name of the entity granted leave to construct as a result of a restructuring.

BEFORE: Ken Quesnelle
Presiding Member

VARY ORDER

1.0 BACKGROUND

On September 9, 2002, the Board issued an Order (proceeding RP-2001-0033) pursuant to an application by Sithe Energies Canadian Development, Ltd. under sections 92 and 101 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the “Act”) for leave to construct a 230 kilovolt transmission line of approximately 2 kilometres in length to connect a proposed 900 megawatt electricity generating plant in Brampton, Ontario (the “Goreway Station”) to the Hydro One transmission system. That Order has subsequently been the subject of further Orders of the Board dated November 20, 2002, October 31, 2003, September 1, 2005 and December 2, 2005. The Order as varied currently grants leave to construct to Sithe Global Power Goreway ULC (“Sithe Goreway”).

On March 2, 2006, Sithe Goreway filed a Motion Record with the Board containing a Notice of Motion requesting the following relief:

- an Order varying the Order of the Board issued on September 9, 2002, as subsequently varied as described above, to replace the name of the Applicant, Sithe Goreway, with Goreway Station Partnership (“GSP”) as a result of a change in the ownership structure;
- an Order amending the requirement contained in Rule 42.03 of the Board’s *Rules of Practice and Procedure* (the “Rules”) requiring that a Notice of Motion be filed and served within 20 calendar days of the date of the Order;
- an Order dispensing with an oral hearing of the Motion; and
- such further and other Orders as the Board considers just and necessary.

The Motion is made under section 18 of the Act, Rules 1.03, 7, 34.01, 42, 43 and 44 of the Rules and sections 21.2, 25.0.1 and 25.1(1) of the *Statutory Powers Procedure Act*.

On March 15, 2006, the Board issued its Procedural Order No. 1 in which the Board advised that it would proceed with this matter by way of a written hearing unless any party satisfies the Board that there is a good reason for not proceeding by way of a written hearing. The Procedural Order further directed that any intervenor wishing to make submissions objecting to a written hearing or regarding the relief sought in the Motion file such submissions with the Board no later than March 21, 2006.

No submissions were received by the Board, and the Board has proceeded by way of a written hearing.

The Board has assigned File No. EB-2006-0052 to this Motion.

2.0 GROUNDS FOR THE MOTION TO VARY

According to the Motion Record:

- in January, 2006, Sithe Goreway successfully completed negotiations with the Ontario Power Authority and entered into an Accelerated Clean Energy Supply Contract for the Goreway Station, effective December 31, 2005, and a construction contract was executed on January 17, 2006 in relation to the construction of the Goreway Station;
- for purposes of efficient tax planning, Sithe Goreway created a wholly owned subsidiary, Sithe Global Power Goreway II ULC ("Sithe Goreway II") and then formed GSP in which Sithe Goreway holds 99.99% of the partnership units and Sithe Goreway II holds the remaining 0.01%. Sithe Goreway II is a single purpose entity that was established for the sole purpose of holding a 0.01% share in GSP; and
- effective January 31, 2006, all of the assets related to Goreway Station were transferred to GSP by way of an Assignment and Assumption Agreement. However, permits that require an approval prior to transfer have not been transferred and are currently being held by Sithe Goreway until it receives the appropriate permissions to transfer the permits to GSP.

Sithe Goreway submitted that the above corporate reorganization has not resulted in a "de facto" change in control as Sithe Goreway controls GSP by holding 99.99% of the partnership units, and its wholly-owned subsidiary holds the remaining 0.01%. Moreover, Sithe Goreway is the Managing Partner of GSP. Thus, the management of the entity developing Goreway Station remains unchanged, allowing the construction and operation of Goreway Station and the associated transmission line to proceed as previously envisioned.

Sithe also sought an extension of the period of time that a Motion to Vary may be filed since the changed circumstances have arisen more than 20 days after the date of the relevant Order.

3.0 BOARD FINDINGS

The Board recognizes that the construction of the proposed electrical transmission facilities, which the Board has already found to be in the public interest, is necessary if the Goreway Station is to be developed.

The Board also acknowledges Sithe Goreway's submission that, while there is a change in the entity that would construct and operate the Goreway Station, there is no "de facto" change in control and construction and operation of Goreway Station and the associated transmission line would proceed as previously envisioned.

The Board therefore finds that Sithe Goreway's request to replace the name of the Applicant with GSP is not such as to affect the rationale underlying the September 9, 2002 Order granting leave to construct in relation to this project, and is reasonable.

The Board agrees to waive the requirement contained in Rule 42.03 that a Notice of Motion be filed and served within 20 calendar days of the date of the relevant Order since the changed circumstances have arisen more than 20 days after the date of the relevant Order.

THE BOARD ORDERS THAT:

1. The Order of the Board issued to Sithe Energies Canadian Development, Ltd. on September 9, 2002 in proceeding RP-2001-0033 (amended by a Vary Order dated November 20, 2002, a Decision and Order dated October 31, 2003, and Vary Orders dated September 1, 2005 and December 2, 2005) is varied as follows:
 - The authorizations at pages three and four, numbered paragraphs 1 through 3, granted to Sithe Energies Canadian Development, Ltd. and subsequently transferred to Sithe Canada Ltd. and Sithe Global Power Goreway ULC, are hereby transferred to Goreway Station Partnership.
 - References to Sithe Global Power Goreway ULC in the October 31, 2003 Decision and Order and the September 1, 2005 Vary Order (in both cases changed to that name from Sithe Canada Ltd. by the December 2, 2005 Vary Order) are hereby changed to Goreway Station Partnership.
2. The requirement contained in Rule 42.03 of the Board's Rules of *Practice and Procedure* that a Notice of Motion be filed and served within 20 calendar days of the date of the relevant Order is waived for the purpose of this proceeding.

ISSUED at Toronto, March 30, 2006

ONTARIO ENERGY BOARD

Original signed by

John Zych
Board Secretary