



EB-2013-0421

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 Hydro One
Networks Inc. for an order or orders pursuant to section 92
of the *Ontario Energy Board Act, 1998* (as amended)
granting leave to construct transmission line facilities in the
Windsor-Essex Region, Ontario.

DECISION ON THRESHOLD QUESTIONS

December 16, 2014

Hydro One has applied to the Ontario Energy Board (the “Board”) for an order granting leave to construct approximately 13 kilometers of transmission line in the Windsor-Essex area and to install optic ground wire (“OPGW”) on existing and new towers as part of the Supply to Essex County Transmission Reinforcement (“SECTR”) project. The Application was filed on January 22, 2014, under s. 92 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the “Act”).

The Board issued a Notice of Application and Hearing (“Notice”) on February 13, 2014. The Notice was published and served in accordance with the Board’s Letter of Direction.

On March 31, 2014, the Board issued Procedural Order No. 1 in which amongst other things it granted intervenor status to the following parties: Comber Wind Limited Partnership, E.L.K. Energy Inc., Entegrus Powerlines Inc., Enwin Utilities, Essex Powerlines Corporation, the Independent Electricity System Operator and the Ontario

Power Authority.

On July 22, 2014, the Board issued Procedural Order No. 2 and determined that before considering the merits of the application, it would first consider the threshold issue of what are the transmission facilities that fall under the scope of s. 92 of the Act and for which an applicant must seek Board approval. The Board received submissions from Hydro One and Board staff on the threshold questions.

On November 26, 2014, the Board received a letter from counsel for E.L.K. Energy Inc., Entegrus Powerlines Inc. and Essex Powerlines Corporation. The Board is considering the matters that have been raised in that letter and will provide further procedural guidance in due course.

DECISION ON THRESHOLD QUESTIONS

Background

The Board's power to grant an applicant leave to construct electricity facilities is set out in s. 92 (1) of the Act which states:

92 (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection.

S. 89 of the Act defines “electricity transmission line” as: “... a line, transformers, plant or equipment used for conveying electricity at voltages higher than 50 kilovolts”.

Ontario Regulation 161/99, section 6.2(1) provides:

- 6.2(1) Subsection 92(1) of the Act does not apply to,
- (c) a person that constructs or reinforces an electricity transmission line that is 2 kilometres or less in length;
 - (d) a person that expands an electricity transmission line in length by 2 kilometres or less;

The SECTR project includes the following facilities and work:

- i. construction of approximately 13 kilometers of new 230 kV double-circuit transmission line on steel lattice towers on a new right-of-way;

- ii. installation of OPGW on new and existing towers; and
- iii. building of a new 230/27.6 kV Leamington Transformer Station ("Leamington TS").

The threshold questions arise because Hydro One is requesting a Board order pursuant to s. 92 of the Act granting it leave to construct the proposed transmission line and to install OPGW but it is not asking for a similar order for the construction of the Leamington TS. Although the Leamington TS is part of the SECTR project and is proposed to be built in conjunction with the transmission line, Board approval is not being sought for the construction of the Leamington TS.

Accordingly, the Board sought submissions from parties on: "... what transmission facilities fall under the scope of s. 92 of the Act and for which an applicant must seek leave of the Board to construct, expand or reinforce." Further, the Board invited Hydro One to clarify its position in relation to the approvals it is seeking.

Hydro One's Argument

Hydro One submitted that approval for the Leamington TS is not required by s. 92 of the Act. Hydro One submitted that although s. 89 of the Act defines electricity "transmission lines" to include "transformers", "plant" and "equipment", O. Reg. 161/99, s. 6.2(1), contains criteria which limit the application of s. 92 to transmission lines greater than 2 kilometres in length. Hydro One submitted that it was important to note that Regulation 161/99 does not contain corresponding criteria for stations - that is, there is no materiality threshold for the Board's review in regard to stations, as there is for lines. In Hydro One's view the intent of this exclusion is to focus the application of s. 92 on lines and not stations. Hydro One submitted that while the exclusion of stations from Regulation 161/99 could be interpreted to mean that approval under s. 92 is required for all transformer station construction, such an interpretation would be impractical to implement and contrary to the intent of the legislation.

Hydro One further submitted that s.92(1) of the Act should not be interpreted to mean that leave to construct approval is required for the construction of transformers, plant and equipment used for conveying electricity at voltages higher than 50 kilovolts. In Hydro One's view such an interpretation would render s.92 nonsensical and would be costly and inefficient to implement.

Hydro One submitted that it has traditionally not sought a leave to construct order for the construction of transformer stations, whether these stations were being constructed on a standalone basis, related to the construction of a transmission line not exceeding 2 km in length or related to the construction of a line greater than 2 km in length.

Hydro One referred to the Board's Decision in EB-2013-0053, (Hydro One's Guelph Area Transmission Reinforcement application) where the Board accepted that costs related to the construction of the Inverhaugh S.S (a transmission station) would be reviewed in a subsequent rate application and no leave to construct order was sought for the construction of Inverhaugh S.S and none was granted.

Hydro One also referred to section 4.3 of the *Board's Filing Requirements for Applications under s. 92 of the Act, dated July 31, 2014* ("Filing Requirements") and submitted that the emphasis of these requirements is on line work rather than station work.

With respect to the approval sought for the installation of OPGW, Hydro One submitted that it considers OPGW to be a part of the proposed transmission line and therefore approval is being sought as part of the line approval.

Board Staff's Argument

Board staff submitted that based on the definition of "transmission lines" in s. 89 of the Act which includes "transformers", "plant" and "equipment used for conveying electricity at voltages higher than 50 kilovolts", approval for the Leamington TS and OPGW under s.92 of the Act is required. Staff submitted that the Regulation and underlying legislation require that Board approval is required for the construction of transformers, plant and equipment if they are related to a transmission line that is greater than 2 km in length but did not provide any analysis as to how the language of the regulation can be interpreted so as to support this contention.

With respect to the installation of OPGW, Board staff submitted that if the Board decides to approve the installation of OPGW that it may wish to qualify its approval as pertaining to the operation of the transmission line.

Board Findings**Transformer Stations**

The Board finds that transformer stations require approval under section 92 if they are associated with the construction of a line which exceeds 2 km in length, and are exempt if they are not.

The Board makes this finding based on its reading of section 6.2(1) of O.Reg 161/99 in conjunction with the definition of “electricity transmission line” in section 89 of the Act.

Substituting the full definition for the words “electricity transmission line” in section 6.2(1) of O.Reg 161/99 means it reads as follows:

6.2(1) Subsection 92(1) of the Act does not apply to,

(c) a person that constructs or reinforces a “ **line, transformers, plant or equipment used for conveying electricity at voltages higher than 50 kilovolts**” that is 2 kilometres or less in length;

(d) a person that expands a “**line, transformers, plant or equipment used for conveying electricity at voltages higher than 50 kilovolts**” in length by 2 kilometres or less;

It is important in the Board’s view to consider all parts of the definition, including the words “for conveying electricity”. Transformers, plant and equipment are not included in the definition unless they are used for conveying electricity. They cannot convey electricity unless there is a line which connects the transformer, plant or equipment to the transmission system.

In some cases, often referred to as “stand-alone” transformer stations, the line will be very short and clearly less than 2 kilometres. As a result the transformer station will be exempt.

In cases where the line, transformer and other equipment is part of a project all of which together will convey electricity at more than 50 kilovolts, and the line is more than 2 kilometres in length, the entire project must be approved under section 92, as it is not exempt, and all the components are included in the definition of an electricity

transmission line.

The Board has not given any weight to the arguments relying on the Filing Requirements as it does not consider the Filing Requirements to be a determinative authority in defining the scope of s. 92(1) of the Act and O.Reg 161/99. The filing requirements should flow from a proper interpretation of the legislation and not the other way around.

OPGW

With respect to the installation of OPGW, the Board finds that the OPGW should not be identified as a separate facility for approval under s. 92. To the extent that it is an integral component of the transmission line and is required for the operation of the transmission line it forms part of the project that is being approved as plant and equipment used to convey electricity at voltages higher than 50 kilovolts. To approve it as a separate asset would have no meaning as it does not supply any function related to the conveyance of electricity on a standalone basis.

Any installed functionality or communication capacity that is installed beyond what is required for the operation of the transmission line is not covered by the Board's leave to construct order.

DATED at Toronto, December 16, 2014

ONTARIO ENERGY BOARD

Original signed by

Ken Quesnelle
Presiding Member

Original signed by

Cathy Spoel
Board Member

Original signed by

Christine Long
Board Member