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RESS, EMAIL & COURIER

Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: Windlectric Inc. - Application for Leave to Construct (EB-2014-0300) - Response to Requests for Oral Hearing

We are counsel to Windlectric Inc. ("Windlectric"), applicant in the above-referenced proceeding. We are writing in response to a number of recent requests that have been made for the Board to conduct an oral hearing. For the reasons set out below, Windlectric remains of the view that the application should continue to be considered by way of a written hearing process. The requests have all been submitted well past the deadline established by the Board for receiving requests for an oral hearing. With one exception, the requests are from persons who are not parties to the proceeding and who would therefore not be entitled to participate in an oral hearing if one were held. Moreover, the reasons given in support of the requests do not merit an oral hearing and completion of the proceeding through a written process would be consistent with the approach taken by the Board in prior proceedings of a similar nature.

Background

Windlectric filed its application on September 22, 2014. Notice of Application was published and served on directly affected persons on November 6, 2014. The Notice invited interested and affected persons to submit a letters of comment or to seek intervenor status to become an active participant in the proceeding. The Notice also advised that Windlectric requested a written hearing and that the Board welcomed submissions as to whether and why an oral hearing may be needed. Such submissions requesting an oral hearing were due by November 17, 2014. As of that date, the Board had received one letter of comment from Amy Caughey and one observer request letter from Laurie Kilpatrick/John Moolenbeek, each of which requested an oral hearing. Windlectric responded to those requests by way of letter on November 20, 2014, in which we submitted that neither letter offered any reasons to support its oral hearing request.

On November 25, 2014, the APAI filed a late intervention request. As part of the intervention request, the APAI made a late request for an oral hearing on the sole basis that "there is a significant body of evidence" to be considered. In Procedural Order No. 1, which was issued on November 26, 2014, the Board noted the APAI request for an oral hearing but did not order that an oral hearing be held.

Subsequent to Procedural Order No. 1 being issued, between December 6, 2014 and January 5, 2015, the Board received approximately 20 letters of comment and approximately 30 observer status requests. The majority of these letters have included requests for an oral hearing. In addition, the APAI filed a further request for an oral hearing by way of letter dated December 15, 2014.

Submissions

All of the requests for an oral hearing that were submitted between December 6, 2014 and January 5, 2015, as well as the APAI's further request of December 15, 2014, were filed late relative to the November 17, 2014 deadline set out in the Notice of Application. Notice was published and served in accordance with the Board's requirements. Accordingly, the Board should not give any weight to the late requests.

With the exception of the APAI's further request of December 15, 2014, all of the requests for an oral hearing that were filed after November 17 are from persons that filed either a letter of comment or a request for observer status. None of these individuals have intervenor status and are therefore not parties to the proceeding. Accordingly, even if an oral hearing were held, none of these individuals would be entitled to actively participate in the hearing. They gave up that right when they decided not to seek intervenor status. As such, whether or not the Board requires an oral hearing will have no impact on the ability for any of these individuals to participate in the proceeding. The Board should therefore give no weight to any of these requests.

With respect to the APAI's further request for an oral hearing dated December 15, 2014, we note that the APAI previously filed a late request for an oral hearing on November 25, 2014 and that the Board acknowledged this in Procedural Order No. 1. The Board did not invite parties to make further submissions on this issue and, in our view, it would not be appropriate for the Board to permit the APAI to have a second opportunity to make submissions on the same issue. The Board should therefore give no weight to the APAI's further request for an oral hearing.

Should the Board determine that it is appropriate to consider the merits of the late requests for an oral hearing, it is Windlectric's view that these requests do not offer any reasons that are sufficient to warrant an oral hearing. From our detailed review of all the requests filed to date, we have found that the reasons offered in support of the need for an oral hearing can be summarized as follows:

(a) To allow for better understanding of the island, island life and project risks;

(b) To allow for participation by island residents, dialogue, public debate, clarification of issues, the right to be heard and greater transparency;

(c) To allow for participation by two individuals with vision impairments;

(d) To allow for a fair and just result consistent with the rules of natural justice;

(e) To require Windlectric's Board members to testify; and

(f) Because it would be faster than a written hearing process.

In our view, these reasons fail to demonstrate that an oral hearing is required. We disagree that an oral hearing would enable the Board to have a better understanding of issues that are relevant to the proceeding and that arranging for and conducting an oral hearing would be more expedient than continuing by way of writing. Hearing the matter by way of a written hearing, consistent with the Board's well-established rules and processes, will not violate the rules of natural justice or prevent the Board from reaching a fair and just outcome. It is also unlikely that an oral hearing would require testimony from Windlectric's Board members because it does not appear that there are any matters relevant to the proceeding that those individuals would be best suited to address. Moreover, as noted above, an oral hearing would not be a forum that would permit active participation by non-intervenors, dialogue, debate or a right to be heard for the community at large, including the referenced individuals with vision impairments.

We note that in EB-2011-0394[1] the Board stated, and in EB-2012-0365 the Board reiterated[2], that an oral hearing will be held if there is additional evidence or cross-examination required, but that the matters must be of sufficient probative value to the Board's decision-making:

> The Board will conduct an oral hearing where it is determined to be the appropriate means of acquiring additional factual evidence which is required to reach a decision, or as a means of allowing parties to cross-examine on the written evidence. The Board has concluded that given the scope of the proceeding and the matter on which MCSEA proposed to cross-examine, an oral hearing on McLean's evidence would be of insufficient probative value to warrant its conduct.

Based on the test applied by the Board for determining whether an oral hearing was required in each of EB-2011-0394 and EB-2012-0365, the key considerations for the Board will be (a) the scope of the proceeding, (b) whether the Board requires additional facts in order to make a decision, (c) whether an oral hearing is the appropriate means of acquiring the additional factual evidence, and (d) whether an oral hearing is the appropriate means of allowing parties to cross-examine on the written evidence.

The scope of the proceeding is limited by Section 96(1) of the *Ontario Energy Board Act*, which provides that, when considering an application under section 92, if the Board is of the opinion that construction of the proposed work is in the public interest, it shall make an order granting leave to carry out the work. Pursuant to subsection 96(2), in an application under section 92, the Board shall only consider the following when it considers whether the construction of the electricity transmission line or making of the interconnection is in the public interest: (a) the interests of consumers with respect to prices and the reliability and quality of electricity service, and (b) where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources. The Board clarified the limited scope of the proceeding both in the Notice of Application that was published and served by Windlectric, and again in Procedural Order No. 1. We also note that the reference to "price" here relates to electricity transmission rates and not to the cost of the commodity.

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[1] See McLean's Mountain Wind LP, Procedural Order No. 6, dated April 24, 2012 (EB-2011-0394).

[2] See Dufferin Wind Power Inc., Decision with Reasons and Procedural Order No. 4, dated March 19, 2013 (EB-2012-0365).

From our detailed review of the numerous letters of comment and observer request letters, it appears that the issues raised are largely related to matters that are beyond the scope of the Board's jurisdiction in the proceeding. While Windlectric intends to address the letters of comment directly in its final submissions, we do note by way of example that the most commonly referenced issues in the letters received relate to matters such as electricity prices, the economic viability of the generation project, provincial energy policy, environmental and health impacts from turbines and transmission facilities, impacts on the rural character of the island and property values. These issues are outside the scope of the proceeding.

While some issues raised in the letters do have relevance to the proceeding, it is Windlectric's view that those issues have been adequately addressed by the pre-filed evidence that was filed in conformity with the Board's filing requirements and the interrogatory responses. For example, the pre-filed evidence provides a detailed description of all aspects of the proposed transmission facilities as well as relevant background information about the applicant and the need for the proposed transmission facilities. In addition, in interrogatories Windlectric responded to questions relating to matters such as perceived differences in certain information relative to that which was presented in various renewable energy approval documentation, impacts on the island's power supply, why the applicant is not planning to install the transmission line underground on the island, as well as questions related to other permits and approvals that are required by the project.

Given the scope of the proceeding it is therefore Windlectric's view that the Board has a sufficiently complete factual record in the proceeding and that no additional facts are needed for it to make a decision. The information in which the requesting parties are apparently interested in is not relevant to the proceeding and/or not likely to be of sufficient probative value to warrant an oral hearing. Windlectric therefore submits that the Board should refuse the late requests for an oral hearing and issue a Procedural Order establishing dates for the filing of written submissions by the parties.

Yours truly,

Jonathan Myers

cc: Mr. A. Tsopelas, Windlectric Inc.
Intervenors