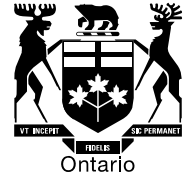


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BY EMAIL

March 3, 2015

Ontario Energy Board
P.O. Box 2319
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2300 Yonge Street
Toronto ON M4P 1E4
BoardSec@ontarioenergyboard.ca

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: OEB Staff Submission
Application by wpd Sumac Ridge Inc.
OEB File No. EB-2013-0442**

In accordance with Procedural Order No. 3, please find attached OEB Staff's submission in the above noted proceeding. The applicant has been copied on this filing.

As a reminder, wpd Sumac Ridge Inc.'s reply submission is due by March 10, 2015.

Yours truly,

Original Signed By

Daniel Kim
Advisor

Encl.



OEB STAFF SUBMISSION

wpd Sumac Ridge Inc.

EB-2013-0442

March 3, 2015

Introduction

wpd Sumac Ridge Incorporated (Sumac) filed an application with the Ontario Energy Board (OEB) under subsection 41(9) of the *Electricity Act, 1998* (Act) for an order or orders of the OEB establishing the location of certain distribution facilities within road allowances owned by the Municipality of Kawartha Lakes (Kawartha).

The OEB issued a Notice of Application on January 27, 2014 and received two requests for intervenor status from Dr. Elizabeth Salmon and Brent Whetung. Kawartha did not submit a request for intervenor status. In Procedural Order No. 1, the OEB accepted the request for intervenor status from Dr. Salmon given that her farm is adjacent to a road allowance that is the subject of the application. The OEB requested additional information from Mr. Whetung to determine whether or not to grant him intervenor status. The OEB also set out the dates for filing interrogatories, responses to interrogatories and submissions. Mr. Whetung did not respond back to the OEB's request for additional information.

In Procedural Order No. 2, the OEB granted Sumac's request for additional time to prepare and submit drawings showing the location of structures that are to be located along and beneath the affected roadways, as requested in a OEB staff interrogatory. On December 5, 2014, Sumac submitted these drawings. In Procedural Order No. 3, the OEB decided to make provision for a second round of interrogatories to allow parties to seek clarification on any matters arising from these drawings. The OEB also decided to proceed with a written hearing.

Sumac is in the process of developing a 10.25 MW wind power generating facility in the vicinity of Kawartha (the Project). In order to transport electricity generated by turbine 5 (of its 5 turbines) to the collector substation, Sumac is proposing to construct a 44 kV underground collector line, approximately 20 metres long, beneath Wild Turkey Road to turbine 4. In order to convey the electricity generated by the Project to the Independent Electricity System Operator (IESO) controlled grid, Sumac is proposing to

construct a 44 kV three phase aboveground distribution line, approximately 1,750 metres long (together, the Distribution Facilities), along a portion of Gray Road to connect to an existing local distribution system located along Highway 35, and running to Hydro One Network Inc.'s Wilson Transmission Station, which is in turn connected to the IESO controlled grid.

Dr. Salmon filed evidence on January 26, 2015. Her evidence noted that part of the Project's Distribution Facilities located along Gray Road and Wild Turkey Road do not meet high safety and environmental standards.

On February 4, 2015, OEB staff filed interrogatories on the evidence filed by Dr. Salmon. Dr. Salmon provided responses to OEB staff interrogatories on February 17, 2015.

Kawartha also filed a letter in response to OEB staff interrogatory #3¹, that indicated that on July 9, 2014, the city council of Kawartha passed a resolution that the application by Sumac for permits relating to Gray Road and Wild Turkey Road were premature. The letter noted that only Kawartha has the right to open and assume Gray Road and Wild Turkey Road, and further only its council can grant approval to open a road.

Background

Sumac's evidence indicates that Sumac had made several attempts to engage with Kawartha in order to complete a Road Use Agreement with respect to locating its Distribution Facilities on the road allowances. Kawartha declined to approve the permit for a Road Use Agreement for reasons which include: that it is premature to the ongoing

¹ OEB Staff Interrogatories, February 4, 2015, #3 On what evidentiary basis are you relying on in stating that the municipality of the City of Kawartha Lakes wants to keep the road allowance, specifically on Gray Road, as a recreational trail and does not want it widened and opened to vehicular traffic. Please provide the same from local residents, members of the public and First Nations that want the road allowance to remain in its unaltered state.

Renewable Environment Approval (REA) process and that only Kawartha has the right and can grant approval to open and assume the roads in question².

Sumac has therefore requested that the OEB issue an order pursuant to section 41(9) of the Act, establishing the location of Sumac's Distribution Facilities as proposed in Exhibit C of its Application.

Staff Submission

OEB staff will address two aspects, namely, the impact of the REA process on the current application, and the application of the section 41 process.

OEB staff notes that during the course of the proceeding no other alternatives to the location advanced by Sumac were proposed for the location of the Distribution Facilities within the road allowances of Wild Turkey Road and Gray Road.

For the reasons set out below, OEB staff submits that Sumac's request should be granted.

REA Process

OEB staff submits that it is permissible for the OEB to issue an order under section 41(9) prior to REA approval or other approvals. The OEB may choose to attach a condition to its order that required that the applicant obtain and comply with all necessary approvals, permits, licences, certificates and easement rights required to construct, operate and maintain the Project. OEB staff notes this has been the practice of the OEB in similar cases. For example, in a letter to the Township of Clearview dated December 12, 2014³, the OEB stated:

² Letter of Comment from Development Services, City of Kawartha Lakes, dated February 24, 2015.

³ EB-2014-0226, An application by wpd Fairview Wind Inc. under section 41(9) of the Electricity Act, 1998, correspondence dated December 12, 2014..

...that the Act does not require that all necessary approvals, such as the Renewable Energy Approval (REA), be obtained prior to the filing of an application under subsection 41(9) or Board decision on the matter. This means that the ERA [*sic*] process and the Board's consideration of the Application may run concurrently...the Board believes that concurrent REA and OEB proceedings are the most efficient process and the ongoing REA proceeding should not prevent the Township (from fulfilling its obligations to express its views regarding the proposed distribution system route in the Application which is a matter with the Board's mandate.

The OEB went on to note that "... in order to proceed with construction of the distribution system, the Applicant will need to obtain all legally required permits and other approvals, which would include the REA."

Applicable Statutory Provisions

Subsection 41(1) of the the Act states:

A transmitter or distributor may, over, under or on any public street or highway, construct or install such structures, equipment and other facilities as it considers necessary for the purpose of its transmission or distribution system, including poles and lines.

The current application has been initiated under subsection 41(9) of the Act, which states:

The location of any structures, equipment or facilities constructed or installed under subsection (1) shall be agreed on by the transmitter or distributor and the owner of the street or highway, and in case of disagreement shall be determined by the Board.

OEB staff notes that the OEB's authority in this proceeding is derived from section 41 of the Act and that subsection 41(9) limits the scope of this proceeding to a determination of the location of the Distribution System within the road allowances. OEB staff also notes that since the Distribution Facilities operate under 50 kV and are owned and

operated by Sumac, Sumac is considered a distributor under the Act. Kawartha also acknowledged Sumac as a distributor under the Act⁴.

OEB staff submits that it is not the OEB's role in this proceeding to consider issues relating to wind turbines or renewable energy policy generally, or to consider alternatives to the Project such as routes for the Distribution Facilities that are outside of the road allowance. OEB submits that the majority of Dr. Salmon's evidence expressed concerns over environmental issues. OEB staff submits that these issues are addressed as part of the REA process and other governmental approval processes. It is the view of OEB staff that these issues do not relate to the location of the Distribution Facilities within the road allowances and are therefore not within the scope of a proceeding under subsection 41(9) of the Act.

OEB staff submits that since no alternative proposal within the road allowances has been put forward by any party, there is no evidence of a competing proposal for the OEB to consider. Based on the evidence on record, OEB staff has no reason to question the appropriateness of Sumac's proposal for the location of the Distribution Facilities within the road allowances in Kawartha and therefore submits that the OEB should grant Sumac's request.

- All of which is respectfully submitted -

⁴ Letter from Municipality of Kawartha Lakes, February 24, 2015