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BY E-MAIL

March 27, 2015

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Windlectric Inc.
Application for Leave to Construct Transmission Facilities
OEB File No. EB-2014-0300**

Pursuant to Procedural Order No. 3 issued on February 24, 2015, please find attached the submissions of OEB staff in the above proceeding.

Yours truly,

Original Signed By

Leïla Azaïez
Case Manager

c. All Parties



OEB Staff Submission

**Application for Leave to Construct
Transmission Line and Associated Facilities
EB-2014-0300**

March 27, 2015

BACKGROUND

On September 22, 2014, Windlectric Inc. (“Windlectric”) filed an application with the Ontario Energy Board (OEB or the “Board”) under Section 92 of the OEB Act for leave to construct approximately 5.9 kilometers of single circuit 115 kilovolt electricity transmission line and associated substation and switching station (collectively the “Transmission Facilities”) to connect a proposed 75 megawatt wind generation project, the Amherst Island Wind Energy Project (the “Generation Project”), to an existing transmission line owned and operated by Hydro One Networks Inc. (“Hydro One”). Windlectric also applied under Section 97 of the OEB Act for approval of the form of land-use agreements and under Section 101 of the OEB Act for authorization to construct portions of the proposed transmission facilities upon, under or over a highway, utility line or ditch.

The OEB issued a Notice of Application and Hearing on October 15, 2014. The Independent Electricity System Operator (IESO) and Laurie Kilpatrick and John Moolenbeek, on behalf of the Association to Protect Amherst Island (APAI) applied for, and were granted intervenor status.

During the course of this proceeding, the OEB made provisions for the filing of interrogatories, responses to interrogatories, the filing and testing of intervenor evidence and argument. OEB staff has reviewed the full record in developing its submissions.

SUBMISSIONS

OEB staff’s submissions will examine the economic impact of the Transmission Facilities on affected consumers, the impact on the high-voltage system insofar as the quality of electricity service and reliability are concerned, and will address issues related to the connection to the grid of renewable generation. Submissions will also deal with land matters and crossings.

Scope of the Proceeding

OEB staff submits that the scope of this leave to construct proceeding is set out in the Notice of Application wherein the OEB stated that it will consider four issues:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service;
2. The promotion of the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario;
3. The form of agreement that Suncor Energy Products, Inc. offers to landowners affected by the route or location of the Transmission Facilities; and
4. The public interest with respect to the construction of the work upon, under or over a highway, utility line or ditch.

Interests of Consumers

Interest of Consumers with Respect to Prices

Windlectric stated in its pre-filed evidence¹ and reiterated in its argument-in-chief² that the company will bear any cost associated with the planned Transmission Facilities, and that the cost of Windlectric's infrastructure would not affect transmission rates. The applicant also noted in its submissions that the OEB's review of the interest of consumers with respect to prices excludes a review of the actual cost of the power generated, and is limited to costs associated with connecting to the provincial transmission system. The OEB reiterated this approach to Section 96(2) most recently in a decision issued in February 2015.³

Windlectric also noted that it will comply with the terms of the connection agreement that would govern its relationship with Hydro One which would be based on the OEB's prescribed form of connection agreement.⁴

OEB staff notes that should there be any modification at the connecting transmitter's end, Sections 6.3 and 6.5 of the *Transmission System Code*⁵ govern the cost allocation

¹ Exhibit B, Tab 2, Schedule 1, p. 7

² At § 16

³ In EB-2014-0022 (Suncor Energy Products Inc.) the OEB stated that: "In considering the interests of consumers with respect to prices under subsection 96(2) of the Act the OEB's review pertains to the direct price impact of the Transmission Facilities. Accordingly, the issues [...] concerning the impact of renewable generation on electricity prices in general are not within the scope of this proceeding.

⁴ At § 18

⁵ Revised August 26, 2013

of any upgrades, and submits that any agreement between Hydro One and Windlectric is a contractual matter between the two entities. Hydro One is an OEB rate-regulated entity, and any capital expenditures it may incur would be examined in the course of a rate application by Hydro One.

OEB staff is satisfied that the Transmission Facilities will not negatively impact the interest of consumers with respect to transmission prices.

Interests of Consumers with Respect to System Reliability and the Quality of Electricity Service

Windlectric filed a copy of a System Impact Assessment (SIA) report dated April 18, 2012 as part of its pre-filed evidence⁶, as well as a copy of a Notification of Conditional Approval of Connection Proposal ("Notification of Conditional Approval")⁷. The system impact analysis is conducted by the Independent Electricity System Operator (IESO), which issued both the SIA and the Notification of Conditional Approval. The SIA report specified a number of requirements for Windlectric to comply with, and concluded that subject to those requirements, the proposed Transmission Facilities are expected to have no material adverse impacts on the reliability of the integrated power system. In support of these conclusions, the IESO issued the Notification of Conditional Approval, which states that:

... any further material change to your proposed connection may require a re-assessment by the IESO and may result in a nullification of the conditional approval.

The pre-filed evidence also contained a copy of a Customer Impact Assessment (CIA) report conducted by Hydro One.⁸ The CIA report dated April 16, 2012 concluded that the Transmission Facilities will not have any adverse impact on existing Hydro One customers in the vicinity of the planned transmission infrastructure.

In correspondence to Windlectric dated March 9, 2015, the OEB noted that the descriptions of the proposed facilities in the SIA and CIA reports were not identical to the descriptions in the application before the Board. The OEB requested that Windlectric provide either updated SIA and CIA reports or letters from the IESO and

⁶ Exhibit F/ Tab 1/ Schedule 3

⁷ Exhibit F/ Tab 1/ Schedule 2

⁸ Exhibit G/ Tab 1/ Schedule 2

Hydro One confirming that the SIA and CIA reports remain accurate despite the time that had elapsed since they were prepared and despite the changes to the descriptions.

Windlectric submitted that the conclusions of the SIA and CIA reports supported its application⁹, and advised that, although it had made requests to the IESO and Hydro One for letters or updated reports, it had not yet received any documentation.¹⁰

Windlectric argued that the submission of additional information regarding the SIA and CIA reports should not affect the proceeding timelines and that should the OEB grant leave to construct it could do so conditional on Windlectric obtaining updated SIA and CIA reports.

The requested SIA and CIA updates have not been submitted to date. It therefore continues to be unclear whether the changes to the descriptions of the proposed facilities in the SIA and CIA reports compared to the descriptions in the pre-filed evidence constitute a change that would require system and /or customer impact re-assessments.

OEB staff understands that any infrastructure project goes through scope and schedule refinements as construction advances and that submission of additional information respecting SIA and CIA reports is not within the company's control.

With respect to the impact assessments, Sections 4.3.6 and 4.3.7 of Chapter 4 of the OEB's *Filing Requirements for Electricity Transmission and Distribution Applications*¹¹ offer some valuable detail. In particular, Section 4.3.6 provides that:

In the absence of a final SIA, the applicant must submit a draft SIA and inform the OEB when the final SIA will be available. Final approval by the IESO and conformance with its conditions is a requirement for granting leave to construct.

Section 4.3.7 does not specifically address the absence of a final CIA report, however OEB staff is of the view that the same approach should apply to the CIA.

OEB staff notes that the Board has previously issued leave to construct decisions with specific conditions related to system and customer impact assessments.

⁹ At §3 (b), 3 (c)

¹⁰ At § 22

¹¹ *Filing Requirements for Electricity Transmission Applications under Section 92 of the Ontario Energy OEB Act*, revised July 31, 2014

OEB staff submits that if the updated information is not filed by the date on which a decision would be issued, the OEB may choose to treat the current SIA and CIA reports as drafts and condition its approval on the filing of final impact assessments. In that case, OEB staff would also recommend a status update from Windlectric in its reply submission as to the necessary time to re-run these impact assessments. If the new analyses are forecast to extend beyond the 12-month start of construction window granted in a typical leave to construct, the OEB may want to consider holding the application in abeyance pending receipt of the requisite reports.

Public Policy Responsiveness and the Promotion of Renewable Energy Generation

The pre-filed evidence indicates that Windlectric was awarded a power purchase agreement in the form of a feed-in tariff (FIT) contract in February 2011 in respect of the Amherst Island Wind Energy Project¹². Pursuant to this contract, Windlectric has a 20-year contract with the IESO to supply electricity to the provincial electricity grid from the Generation Project.¹³

Windlectric argued that, in line with Section 4.4.2.3 of Chapter 4 of the OEB's *Filing Requirements for Electricity Transmission and Distribution Applications*, in leave to construct applications for non-rate-regulated transmitters that are connecting generation to the IESO-controlled grid, the OEB's test for the need for the transmission facilities is premised on evidence of a power purchase agreement (FIT Contract).¹⁴

Windlectric further submitted that the application is necessary to convey electricity from the Generation Project to the IESO-controlled grid, consistent with the Province of Ontario's policy of promoting renewable energy, and fulfills the public interest as contemplated in Section 96(2) of the OEB Act.

Windlectric reiterated that it will seek a generation license upon receiving a Notice to Proceed from the IESO but that it is exempt from a transmission licence requirement by Section 4.0.2(1)(d) of Ontario Regulation 161/99.¹⁵

¹² Exhibit B/ Tab 3/ Schedule 1 (FIT Contract No. F-001563-WIN-130-601)

¹³ Formerly the Ontario Power Authority

¹⁴ Argument-in-Chief at § 15

¹⁵ At § 7

OEB staff notes that in order to receive a Notice to Proceed, Windlectric must submit a valid copy of its environmental assessment, the Renewable Energy Approval (REA) documentation. The Notice to Proceed is in turn an essential document for the OEB licensing proceeding.

OEB staff requested in interrogatory # 1 that Windlectric file the REA once it is issued by the Ministry of the Environment. The pre-filed evidence mentioned that the REA was expected in Fall 2014. In its submissions filed on March 16, 2015, Windlectric indicated that the REA had still not been issued. OEB staff understands that the REA was meant as a streamlined process that, once all documentation was filed, would take approximately six months to process. The intervenor, APAI also submitted several documents indicating potential issues in the REA process.

OEB staff does not have sufficient information on the evidentiary record to determine the cause of the delay in the issuance of the REA.

OEB staff recognizes that Windlectric is seeking leave to construct transmission assets only so that it can participate in the generation market in Ontario. OEB staff is of the view that granting leave to construct transmission facilities to any entity that holds a FIT contract is consistent with policies of the Government of Ontario as outlined in the Long Term Energy Plan and in line with Section 96(2) of the OEB Act. However, granting a leave to construct to an applicant whose REA is considerably delayed would be premature, in OEB staff's view. If the applicant does not receive the REA, it will not be able to become a licenced generator notwithstanding that it has a FIT Contract. As with the submission above regarding filing of updated SIA and CIA reports, OEB staff submits that, if the OEB grants the leave to construct, it should include a condition that the approval granting leave to construct the Transmission Facilities is not effective until the applicant obtains the REA and notifies the OEB.

Matters Associated with Siting

General Route

Windlectric argued that the routing and locations of the Transmission Facilities are appropriate and should be approved as filed.¹⁶

¹⁶ At § 33

OEB staff would like to stress that the OEB does not approve locations of transmission facilities or the general route of a transmission line in a Section 92 application. The environmental assessment process, which is the REA process in the case of renewable generation projects, considers environmental and socio-economic impacts of alternative routes, and ultimately determines and approves the route and locations of any facilities. As discussed above, the REA is currently under review.

Leave to construct applications are premised on a single route which would have been approved in the REA process. If the Ministry of the Environment requires changes to a selected route, which is also part of a Section 92 application under the OEB Act, and an OEB panel considers the change to be material, an application could become moot, and require the filing of a new application and all associated procedural steps, which would result in increased administrative and regulatory costs.

OEB staff recognizes that the Board has in the past approved leave to construct transmission facilities in advance of final approval of an environmental assessment. OEB staff is of the view that this approach should be reserved for circumstances in which the environmental assessment approval is expected shortly or appears to be non-contentious. As mentioned earlier, while OEB staff does not know the reason for the delay for the REA, it may be an indication that there are complexities with the approval that may warrant deferring the decision on the leave to construct until the REA is completed.

OEB staff submits that Windlectric should address this issue in its reply submission and provide the OEB with greater certainty on the general route, and an update on the REA process if possible.

Land Matters

According to the application filed, the transmission line will have overhead, underground and submarine portions and will require private and Crown lands. Other private lands will be necessary to accommodate the switching station and the substation.

Section 97 of the OEB Act requires that the OEB is satisfied that Windlectric has offered, or will offer, to each landowner affected by the approved route or location an agreement in a form approved by the OEB.

Windlectric filed as part of its application four different forms of agreement that it will enter into with various landowners, which are: two forms of a lease option agreement, a form of permanent easement option agreement; and a form of temporary easement option agreement¹⁷. With respect to the submarine portion of the transmission line, Windlectric indicated in its argument-in-chief that it would apply to the Ministry of Natural Resources for a Crown lease for a submarine corridor once an as-built survey can be completed.¹⁸

OEB staff notes that none of the affected landowners have expressed any concerns regarding the form of agreement offered to them. OEB staff has reviewed the draft forms of agreement and is of the view that they conform with the generic form of agreement at Appendix A of Chapter 4 of the OEB's *Filing Requirements for Electricity Transmission and Distribution Applications*. OEB staff also notes that the Board approved similar forms of agreement in other applications and that the forms of agreement submitted by Windlectric are appropriate and meet the requirements under Section 97 of the OEB Act.

Crossings

Windlectric indicated in pre-filed evidence that crossings are required in Loyalist Township, and cited its statutory rights pursuant to Section 41 of the *Electricity Act* to cross roads to install the Transmission Facilities¹⁹. Windlectric also indicated that it had started negotiations with the Ontario Ministry of Transportation for a crossing agreement to accommodate the submarine portion of the transmission line.

¹⁷ Pre-filed Evidence Exhibit E/ Tab 1/ Schedule 2/ Appendices A, B, C & D

¹⁸ At § 36

¹⁹ Exhibit E/ Tab 1/ Schedule 1

Section 41 of the Electricity Act, 1998 states:

41. (1) 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.

Accordingly, Windlectric has applied under Section 101 of the OEB Act for an order approving the use of right-of-ways in the construction of the transmission line upon, under or over a highway, utility line or ditch.

Windlectric also indicated in argument that the company is currently negotiating a road use agreement with Loyalist Township.²⁰

Should the Board grant Windlectric leave to construct the Transmission Facilities, OEB staff is of the view that the OEB should grant the relief under Section 101 of the OEB Act as well.

All of which is respectfully submitted.

²⁰ At § 47