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May 1, 2015

VIA RESS, EMAIL and COURIER

Ontario Energy Board
2300 Yonge Street
Suite 2700
P.O. Box 2319
Toronto, ON M4P 1E4

Attention: Ms. Kirsten Walli
Board Secretary

Dear Ms. Walli:

Re: Niagara Region Wind Corporation
Amended Application for an order under section 41(9) of the *Electricity Act, 1998*,
S.O. 1998, c. 15, Sch. B, as amended
Board File No. EB-2014-0298
Final Submissions

Pursuant to the Ontario Energy Board's Procedural Order No. 1 dated March 18, 2015 in the above-noted proceeding, please find enclosed the Applicant's Final Submissions.

Yours truly,

McCarthy Tétrault LLP

Per:

Signed in the Original

Héloïse Apestéguy-Reux
Associate

ONTARIO ENERGY BOARD

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 Niagara Region Wind Corporation for an order under section 41(9) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Sch. B.

APPLICANT'S FINAL SUBMISSIONS

Introduction

1. Niagara Region Wind Corporation (the “**Applicant**”) filed an amended application with the Ontario Energy Board (the “**Board**”) on December 18, 2013 for an order pursuant to section 41(9) of the *Electricity Act, 1998* (the “**Electricity Act**”). The Applicant is developing the Niagara Region Wind Farm (“**NRWF**”), a proposed 230 MW wind energy generation facility which was awarded a power purchase agreement under the Feed-in Tariff program of the Ontario Power Authority (which was merged with the Independent Electricity System Operator (“**IESO**”) on January 1, 2015).
2. The NRWF will be located in the Niagara Region in the municipalities of West Lincoln, Lincoln, Wainfleet and in Haldimand County, and will be connected to the IESO-controlled grid by way of a transmission interconnection facility (the “**Transmission Facility**”) in respect of which the Applicant was granted leave to construct on July 3, 2014 (EB-2013-0203).
3. In addition to the Transmission Facility, the Applicant will be constructing distribution facilities in order to transport electricity generated by the NRWF to the Transmission Facility. In all, the distribution facilities will consist of 156 km of 34.5 kilovolt (“kV”) overhead and underground distribution lines.
4. The Applicant will locate approximately 6 km of the distribution lines for the NRWF along municipal streets and highways owned by the Municipality of Wainfleet (“**Wainfleet**”). These distribution lines will be underground.
5. The Applicant has been working with Wainfleet in respect of a road use agreement but at present has not entered into an agreement with Wainfleet in respect of same. Consequently, the Applicant has also not come to an agreement on the location of distribution facilities along Wainfleet’s municipal streets and highways. As a result, the Applicant is seeking the assistance of the OEB by way of an order under section 41(9) of the *Electricity Act* to determine the location of distribution facilities along the municipal streets and highways required for these facilities in Wainfleet.
6. On March 18, 2015, the Board issued Procedural Order No. 1. No requests for intervention were received following the Applicant’s serving of the Notice of Application, therefore no persons were granted intervenor status. Procedural Order No. 1 set out a timeline for interrogatories and final submissions. These submissions are in response to Procedural Order No. 1.

Legislative Context

7. Section 41 of the Electricity Act sets out a comprehensive set of rights of access to public streets and highways pursuant to which a distributor or transmitter's rights of access to and installation on public streets or highways are prescribed by legislation.
8. Specifically, section 41 provides that electricity transmitters and distributors have the right to:
 - Install structures, equipment and other facilities over, under or on any public street or highway (ss. 41(1));
 - Inspect, maintain, repair, alter, remove or replace any structure, equipment or facilities (ss. 41(2)); and
 - Enter onto land to exercise statutory powers (ss. 41(3) and (4)).
9. Under section 41, all of these rights are exercisable without the consent of the owner or other person having an interest in the street or highway (ss. 41(5)).
10. Pursuant to section 41(9), when a distributor has not been able to come to an agreement with a municipality in respect of the location of distribution facilities, the location may be determined by the OEB.

The Applicant is a Transmitter and Distributor

11. The Applicant's 156 km of distribution lines which will transport electricity to the Transmission System constitute a distribution system as that term is defined under section 2(1) of the Electricity Act.
12. In consequence, the Applicant is a distributor and transmitter under the Electricity Act, including for the purposes of section 41(9), and may install structures, equipment and other facilities over, under or on any public street or highway.

The Board's Jurisdiction in a Section 41(9) Proceeding

13. Pursuant to section 41(9) of the Electricity Act, when a distributor has not been able to come to an agreement with a municipality in respect of the location of distribution facilities, the location may be determined by the Board.
14. In their interrogatories, Board staff asked the Applicant for its view on whether the Board had jurisdiction over unopened road allowances under section 41 of the Electricity Act.

The Applicant replied that the Board did have jurisdiction under section 41 of the Electricity Act over the unopened road allowance required by the Applicant for its distribution facilities.

15. More specifically, the Applicant explained that because the terms “highway” and “street” are not defined in the Electricity Act, it is an acceptable and established interpretive principle to look to the definition of such term in other statutes. The main sources of statutory law defining roads and highways in Ontario are the *Municipal Act, 2001* (Ontario) and the *Public Transportation and Highway Improvement Act* (Ontario). Under the latter statute, a highway is defined to include “a common and public highway.” Under section 26 of the *Municipal Act, 2001* (Ontario), clause 1 of such section 26 identifies “highways” as being highways that existed on December 31, 2002.
16. Under the *Municipal Act* in effect on December 31, 2002, common and public highways included allowances for roads made by Crown surveyors. The unopened road allowances in which the Applicant plans to locate its distribution lines in Wainfleet are all road allowances that were established in the original Crown survey of the Township of Wainfleet. Thus, with such unopened road allowances being “highways” for purposes of both the *Municipal Act, 2001* and the *Public Transportation and Highway Improvement Act*, it is clear and well established law that these particular road allowances are “highways” for purposes of the Electricity Act, and therefore the OEB has jurisdiction under section 41 of the Electricity Act in respect of these unopened road allowances.
17. Board staff agreed with these conclusions in their April 24, 2015 submissions at pages 2-3.

Proposed Distribution System

18. The Applicant attached at Schedule “A” of its answers to Board staff interrogatories a list setting out the road allowances required for its distribution system in Wainfleet.
19. No submissions have been made by any person to suggest that the location of the proposed distribution facilities is not appropriate.
20. The distribution system will be designed and installed in accordance with the Ontario Electrical Safety Code issued by the Electrical Safety Authority and applicable CSA standards. The distribution lines are expected to be installed between one meter to six meters from the property edge of the road right of way depending on width of the right of way and width of existing travelled roads.

Negotiations with Wainfleet for a road use agreement

21. The Applicant is currently in communications with Wainfleet in respect of a road use agreement. However, at this time, a road use agreement has not been executed between the Applicant and Wainfleet.

Conclusion and Order Requested

22. No submissions have been made or evidence filed in this proceeding to suggest that the location of the proposed distribution facilities is not appropriate. The Applicant notes that pursuant to Appendix A of Procedural Order No. 1, Wainfleet has been copied on all filings in this proceeding but has not made submissions.
23. Board staff's submissions recommended that the Applicant's request for a section 41 order be granted. Board staff also noted that no alternative proposal has been put forward in respect of the location of distribution infrastructure.
24. Based on the foregoing, the Applicant submits that its request for an order under section 41 should be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED