



# **Ontario Energy Board Commission de l'énergie de l'Ontario**

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## **DECISION AND ORDER**

**EB-2015-0290**

**FWRN LP**

**Application to transfer leave to construct  
approval to NR Capital General Partnership**

**By Delegation Before:**

**Peter Fraser  
Vice President  
Industry Operations & Performance**

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**November 26, 2015**

## INTRODUCTION AND SUMMARY

On September 3, 2015, in proceeding EB-2015-0183, the Ontario Energy Board (OEB) transferred to FWRN LP (FWRN) leave to construct (LTC) certain electricity transmission facilities that the OEB had initially granted to the Niagara Region Wind Corporation (in proceeding EB-2013-0203).

FWRN has now applied to transfer the LTC to a newly formed partnership, NR Capital General Partnership (NRC GP).

The OEB approves the application for the reasons set out below, subject to the conditions of approval of this Decision and Order.

## THE PROCESS

This Decision and Order is being issued by Delegated Authority without a hearing pursuant to section 6(4) of the *Ontario Energy Board Act, 1998* (Act).

## THE APPLICATION

### Background

FWRN seeks to transfer its OEB authorization to construct certain transmission facilities in Haldimand County and Niagara Region. A description of the transmission facilities and the history of the LTC is set out below.

#### *The Transmission Facilities*

The transmission facilities consist of two substations, a transmission line, a transition station and an interconnect station (collectively, the Transmission Facilities). The Transmission Facilities will transmit power generated by the Niagara Region Wind Farm (the Project), a 230 MW renewable energy generation facility, to the provincial electricity grid. The Transmission Facilities will be located in Haldimand County and Niagara Region with the affected municipalities being the townships of West Lincoln, Lincoln and Wainfleet.

#### *History of the LTC*

On July 3, 2014, the OEB issued a Decision and Order (EB-2013-0203), authorizing Niagara Region Wind Corporation (NRW Co.) to construct the Transmission Facilities.

The LTC was conditional on NRW Co. holding a FIT contract with the former Ontario Power Authority, now the Independent Electricity System Operator (IESO), fulfilling the requirements of the System Impact Assessment (issued by the IESO) and the Customer Impact Assessment (issued by Hydro One Networks, Inc.), and commencing construction within 12 months of July 3, 2014.

On June 26, 2015, the OEB varied its Decision and Order in EB-2013-0203 to make the LTC conditional upon NRW Co. commencing construction within 18 months of July 3, 2014.

On June 4, 2015, the OEB issued a Decision and Order (EB-2014-0298), granting FWRN the right, under section 41(9) of *Electricity Act, 1998*, to locate 6 km of distribution lines for the Project along municipal streets and highways owned by the Municipality of Wainfleet.

On September 3, 2015, the OEB issued a Decision (EB-2015-0183) approving an application to transfer the LTC from NRW Co. to FWRN.

### **Request to transfer LTC to NRC GP.**

In this application, FWRN seeks to transfer the LTC to NRC GP. FWRN indicates that this transfer is necessary in the light of a planned restructuring of the Project. Specifically, FWRN submits that it intends to restructure the Project in the following manner:

1. FWRN will enter into an Asset Purchase Agreement (Asset PA) with NRC GP pursuant to which FWRN will sell all of its right, title and interest in, among other things, the Transmission Facilities to NRC GP. FWRN will not transfer its interest in the FIT contract to NRC GP. FWRN will remain party to the FIT contract and sell electricity generated by the Project to the IESO.
2. NRC GP is a general partnership formed under the laws of Ontario. NRC GP has two partners each are wholly-owned subsidiaries of ENERCON Canada Inc. As a result, FWRN and NRC GP are both controlled by ENERCON Canada Inc.
3. Upon execution of the Asset PA, FWRN and NRC GP will enter into a lease agreement pursuant to which NRC GP will lease, among other things, the Transmission Facilities to FWRN.

FWRN submits that, following the transfer of the LTC, NRC GP will be responsible for fulfilling the requirements of the System Impact Assessment (issued by the IESO) and the Customer Impact Assessment (issued by Hydro One Networks, Inc.).

Construction of the Transmission Facilities began on September 14, 2015, which was within the timeline required by the OEB. FWRN confirms that the transfer of the LTC will have no impact on the construction or operation of the Transmission Facilities, given the change is purely one of the legal ownership from FWRN to NRC GP, both controlled by ENERCON Canada Inc.

FWRN further submits that, given the fact the OEB has found the project to be in the public interest and that the Project will not change as result of the transfer, the OEB should approve the application and grant the transfer of the LTC to NRC GP.

## **OEB FINDINGS**

I approve the application to transfer the LTC from FWRN to NRC GP, and the FIT contract shall remain with FWRN. Approval of the application is necessary in the light of FWRN's proposed restructuring of the Project, as set out above.

The transfer will not affect the existence, location or operation of the Transmission Facilities or the Project. I find that no person will be adversely affected in a material way by the outcome of this application, which merely transfers the OEB's authority already granted.

I am satisfied that upon issuing this decision that NRC GP, through its owner ENERCON Canada Inc., will be responsible for meeting the conditions of approval set out in the OEB's Decision and Order in EB-2013-0203 (granted on July 3, 2014 and varied on June 26, 2015). The change in legal structure does not remove any of the obligations to act in accordance with these orders or to comply with all legislative and regulatory requirements. Given that both FWRN (as operator) and NRC GP (as owner) will require OEB licenses in the future, the OEB can maintain its regulatory oversight of the construction and operation of the Transmission Facilities under the new legal structure.

**IT IS ORDERED THAT:**

1. The leave to construct granted to FWRN in proceeding EB-2015-0183 shall be transferred to NR Capital General Partnership contemporaneously with the transfer of assets between the two entities, as set out above.
2. NR Capital General Partnership shall comply with this Decision and Order and with the conditions of approval as set out in EB-2013-0203.
3. Notwithstanding the foregoing, FWRN LP shall retain the FIT Contract with the IESO relating to the Niagara Region Wind Farm and shall not transfer or otherwise dispose of the contract except with leave of the OEB.

**DATED** at Toronto November 26, 2015

**ONTARIO ENERGY BOARD**

*Original signed by*

Peter Fraser  
Vice President, Industry Operations & Performance