



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

DECISION AND ORDER

EB-2014-0300

WINDLECTRIC INC.

Application for Leave To Construct transmission facilities in Loyalist Township in the County of Lennox and Addington, Ontario.

**BEFORE: Ken Quesnelle
Presiding Member and Vice Chair**

December 10, 2015

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1 INTRODUCTION AND SUMMARY

On September 22, 2014, Windlectric Inc. (Windlectric or the Applicant) filed an application under section 92 of the Ontario Energy Board Act, 1998 (the OEB Act)¹ dated September 19, 2014 (Application). The leave to construct Application is required to construct transmission, distribution and interconnection facilities for the Applicant's 75 MW renewable Amherst Island Wind Energy Project (Generation Project) that it is developing in Loyalist Township, in the County of Lennox and Addington, Ontario. The Applicant is developing the Generation Project pursuant to a Feed-in-Tariff (FIT) contract with the Ontario Power Authority (OPA)², dated February 2011.

The Applicant also seeks OEB approval under section 97 of the Act for the forms of land-use agreements it has offered directly to landowners affected by the proposed transmission facility locations and routing, and under section 101 of the Act authorizing construction of portions of the proposed transmission facilities upon, under or over a highway, utility line or ditch.

The proposed transmission facilities are comprised of:

- A substation, located on Part Lots 31, 32 and 33, Concession 1, on Amherst Island in Loyalist Township, in the County of Lennox and Addington, Ontario at which power from the 34.5 kV collection system generated by the Generation Project will transformed from 34.5 kV to 115 kV by means of one 115/34.5 kV, 50/67/84 MVA transformer (Project Substation).
- A 115 kV switching station located on Part Lots 23, 24 and 25, Concession 1, in Loyalist Township in the County of Lennox and Addington, adjacent to the existing Hydro One Networks Inc. (Hydro One) circuit Q6S (Switching Station).
- Approximately 5.9 Km single circuit 115 kV transmission line (Transmission Line), including overhead, underground and submarine segments, connecting the Project Substation to the Switching Station.

Collectively, these facilities described above are the ``Proposed Transmission Facilities``.

The OEB approves the application by Windlectric for the reasons set out below, subject to the conditions of approval in the Order.

¹ Ontario Energy Board Act, 1998, S.O. 1998,c.15,Sched.B..

² Merged with Independent Electricity Operator on January 1, 2015.

1.1 The Board's Jurisdiction

The Applicant filed its application under section 92 of the Act. Section 92 forms part of a series of provisions that both empower and specifically limit the OEB in its consideration of this type of application. The OEB's power to grant an applicant leave to construct transmission facilities arises from subsection 92(1) of the Act which states:

92. (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection. 1998, c.15, Sched.B, s.91 (1).

In discharging its duties in this proceeding, the OEB is also bound by the provisions of section 96 of the Act which states:

96.(1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

(2) In an application under section 92, the Board shall only consider the following when, under subsection 1, it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.
2. Where applicable and in a manner consistent with the policies of the government of Ontario, the promotion of the use of renewable energy resources. 2009, c.12, Sched.D, s.16.

The provisions within section 96 (2) define the parameters the OEB uses to consider public interest in granting a leave to construct to an applicant. Thus, many aspects of any section 92 application resulting from a transmission project, including the environmental impacts and the general health risks relating to electromagnetic fields are outside the OEB's jurisdiction. The OEB notes that the Association to Protect Amherst Island (APAI) and a number of persons who are not Intervenor submitted a large volume of evidence related to environmental matters including the Applicant's Renewable Energy Approval (REA). Environmental matters are dealt specifically within the scope of the Applicant's REA, which falls under the jurisdiction of Ministry of the Environment and Climate Change. The OEB's approval of a leave to construct

application is contingent on the Applicant obtaining its REA and all other necessary permits and approvals.

The Act also gives the OEB responsibilities over the form of land agreement negotiated with landowners whose lands are affected by the approved route or location of a proposed transmission project. Section 97 of the Act states that:

97. In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in form approved by the Board.

2 THE PROCESS

The OEB issued a Notice of Application and Hearing on October 15, 2014 (Notice) inviting participation from interested parties. The OEB granted Intervenor status to the Independent System Operator (IESO) and Lawrie Kilpatrick and John Moolenbeek, on behalf of the Association to Protect Amherst Island (APAI). APAI was subsequently found to be eligible for costs.

On November 26, 2014 the OEB established the schedule for the filing of questions and responses pertaining to the Applicant's evidence.

On January 8, 2014, the OEB established the schedule for the filing of Intervenor evidence and established the schedule for the filing of questions and responses pertaining to the Applicant's evidence.

On January 21, 2015, APAI submitted a request for cost eligibility and acknowledged they were filing the request late. On January 27, 2015, the Applicant filed a letter stating they have no objection to APAI's request for cost eligibility so long as its allowance at this late stage in the proceeding does not delay the hearing process.

- On February 24, 2015, the OEB ordered that the proceeding would go forward through a written hearing, re-scheduled the filing of questions and responses on the Intervenor evidence and set the schedule for submissions.

On March 9, 2015 the OEB requested the Applicant provide either updated System Impact Assessment (SIA) and Customer Impact Assessment (CIA) reports or letters from the IESO and Hydro One Networks Inc. (Hydro One) confirming that the reports remain valid despite the time elapsed since they were prepared and the changes to the project.

In accordance with Procedural Order No. 3, the Applicant filed its Argument-in-Chief on March 16, 2015. Intervenor submissions were received on March 27, 2015 from the APAI and OEB staff submissions were also received on March 27, 2015, followed by a supplemental letter on March 31, 2015. Procedural Order No. 3 ordered that the Applicant's Reply Submission, if any, must be filed by April 3, 2015. However, on April 2 the Applicant filed a letter with the OEB requesting an extension to the April 3, 2015 submission deadline to April 10, 2015. The OEB granted the Applicant the extension and reminded the Applicant it would not render a decision until the final SIA and CIA reports are completed and filed with the OEB. The Applicant filed its Reply on April 8, 2015.

On June 2, 2015, the Applicant filed a letter with the OEB stating a recently issued report that formed part of its REA process contemplated changes to the number and size of turbines to be used in the Generation Project. In response to the latest Applicant proposed changes, the OEB issued a letter on June 11, 2015 requesting updated SIA and CIA reports that address the most recent project proposal, or letters from the IESO and Hydro One confirming that the SIA and CIA reports remain accurate despite the changes to the project described in the Applicant's June 2, 2015 letter.

On September 24, 2015, the Applicant filed a letter indicating that it had received the Notification of Addendum of Conditional Approval to Connection Proposal along with SIA Addendum Report number 2 from the IESO on September 11, 2015 (SIA Addendum Report) and a letter from Hydro One dated September 23, 2015 referencing the project modifications. Both the SIA Addendum Report and Hydro One's letter confirmed that the proposed changes do not significantly impact the results of the SIA and CIA respectively, subject to the installation of 6 Mvar inductive reactive power compensation rather than 8 Mvar.

3 STRUCTURE OF THE DECISION

The OEB has examined the application within its jurisdictional mandate in terms of interests of consumers with respect to pricing, reliability and quality of electricity service; promotion of the use of renewable energy sources, forms of land agreements offered to impacted land owners and municipal crossings.

4 ANALYSIS OF THE APPLICATION

4.1 Interests of Consumers with Respect to Pricing

Price Considerations Relating to the Cost of Construction

Position of the Parties

APAI argues the Application should be denied, or financial conditions of approval should be imposed because of the high costs of construction, maintaining and decommissioning the Proposed Transmission Facilities. In addition, the Applicant's lack of resources and experience; and the project's financial viability suggest the Applicant will not be in a position to cover the cost associated with the project, and thus those costs will eventually be borne by consumers through higher prices for electricity.

APAI's position is that, as part of the public interest considerations to be taken into account under section 96(2) of the Act, the OEB must consider "the interests of consumers with respect to prices". This includes determining whether the costs associated with the Proposed Transmission Facilities will be borne by the Applicant or passed on to consumers. In APAI's Final Argument of March 27, 2015 APAI states:

"Consistent with the Board's approach in other leave to construct applications, it is appropriate to examine the financial viability of the Generation Project in order to assess whether there is likely to be an adverse impact on prices for consumers".

As an example of this approach, APAI references the OEB's Decision and Order for Union Gas Limited, EB-2008-0024; no leave to construct electricity Decisions and Orders were referenced.

APAI doubts the Applicant's ability to successfully complete the project because the Applicant has provided no evidence of its financial assets or staff, and has no history of constructing or operating similar projects. The Applicant is a subsidiary of a larger corporation, Algonquin Power Co., that has assets in both Canada and United States. APAI submitted that, the Applicant's corporate structure has been created to limit its parent company's liability in the event of project default. APAI has estimated the total cost of the project to be \$260 million plus the cost to decommissioning of \$70 million. Therefore, according to APAI, any losses that the Applicant could not settle will fall on the residents of Amherst Island and consumers at large.

APAI provided an economic analysis³ of the project's projected profitability as evidence that concluded it would have a negative internal rate of return. The Applicant did not challenge the assumptions or conclusions of the APAI study.

APAI acknowledged that it is not the role of the OEB in a leave to construct proceeding to conduct an in-depth financial assessment of an applicant or every proposed project. However, APAI submitted that the OEB must be satisfied, on proper evidence, that the Applicant has the capacity to meet its commitments.

APAI submitted that the evidence it has provided points to a real risk the applicant will be unable to bear the costs of the Proposed Transmission Facilities, thus impacting costs to consumers and that the leave to construct should be denied or postponed until the Applicant is able to address and neutralize the financial risk. As an alternative, APAI further submits that the leave to construct should be conditional on the Applicant providing adequate financial arrangements to cover the decommissioning costs of \$70 million.

In its Application and Argument-in-Chief, Windlectric indicated it will own, construct and maintain the Proposed Transmission Facilities and will bear all associated costs. The Proposed Transmission Facilities will not serve any consumers as defined in the Electricity Act⁴. Rather, the facilities will be used to transmit electricity from the Applicant's Generation Project to Hydro One's transmission system which forms part of the IESO-controlled grid. Accordingly, no project costs are passed on to consumers through transmission rates. The pricing available under the FIT Contract is standardized and does not vary based on the particular transmission or interconnection costs that an individual applicant incurs in respect to its generation facility.

Windlectric challenged APAI's assertions about its ability to bear the costs of the project and its resources and experience. Windlectric in its Reply submission stated:

"Windlectric notes that it and its shareholders are fully committed to the project, that through its parent company the Applicant has significant available resources and experience, and that the project qualified for and obtained a FIT Contract from the Ontario Power Authority".⁵

³ Peter Large P.Eng. & John Harrison PhD, "Engineering and Economic Risk Analysis of the Algonquin Power Company Amherst Island Wind Energy Generating System" July 2014, dated January 19, 2015 at page 2.

⁴ Electricity Act, 1998, S.O. 1998, Chapter 15, Sched A, section 2.

⁵ Windlectric Inc. - Application for Leave to Construct Transmission Facilities (EB-2014-0300), P.O. No.3 Reply submission, April 8, 2015, at paragraph 30.

In the Applicant's view, the issue of decommissioning is not part of the OEB's mandate in considering an application under section 92 of the Act. Rather, decommissioning is part of the Applicant's REA application, as described in a letter⁶ dated November 27, 2013 from the Ministry of the Environment (MOE) to APAL, which indicated applicants are required to prepare a Decommissioning Plan Report (DPR) that describes how the applicant proposes to restore the project location to a clean and safe condition.

In its final argument regarding the interests of consumers with respect to price, the Applicant references the OEB's decision in EB-2013-0040/0041:

"The Board has previously found that its review will be limited to the cost of connecting renewable generation facility to the provincial transmission system and that a review of the actual cost of power generated is outside the scope of the Board's jurisdiction. As such, the Proposed Transmission Facilities will not have an impact on prices in Ontario."⁷

OEB Findings

The OPA awarded Windlectric a contract for the purchase of electricity generated by its proposed Generation Project through the Ontario FIT Program. Windlectric stated that the Proposed Transmission Facilities are necessary to connect the contracted renewable electricity being generated by the Generation Project to the Hydro One transmission grid.

In this application, the evidence is that all of the costs of the Proposed Transmission Facilities will be borne by the Applicant, and there will be no impact on the provincial uniform transmission rate and no price impact on consumers. The OEB finds that the Applicant has adequately demonstrated the need for the Proposed Transmission Facilities. The evidence is clear that the Proposed Transmission Facilities are required for connecting and transmitting the contracted wind energy to the IESO controlled transmission grid.

⁶ Applicant's Argument-in-Chief, paragraph 55, line 4.

⁷ OEB, Decision and Order re Bornish Wind L.P., Kerwood Wind Inc. and Jericho Wind Inc. (EB-2013-0040/0041), dated November 12, 2013, p.5.

4.2 Interests of Consumers with Respect to Reliability and Quality of Electricity Service

System Impact Assessment (SIA) Report

The Applicant filed a SIA report, dated April 18, 2012 prepared by the IESO that assesses whether the proposed connection to the electricity grid, which controlled by the IESO, will have an adverse impact on the quality and reliability of the electricity grid's operation. The IESO concluded that there would be no negative impact from the Proposed Transmission Facilities on the system reliability and quality of electricity service subject to the requirements specified in the SIA. On September 24, 2015 the Applicant filed the SIA Addendum Report in response to proposed changes to the number and size of turbines. The SIA Addendum Report confirmed that the conclusions in the April 18, 2012 SIA report remain valid and the only change the IESO required was a 6 Mvar inductive reactive power compensation rather than 8 Mvar at the Applicant's substation.

Customer Impact Assessment (CIA) Report

The Applicant filed a CIA report, dated April 16, 2012 prepared by Hydro One. The CIA assesses the impact of the proposed connection on Hydro One's transmission customers in the area. The report concluded that the Proposed Transmission Facilities are not expected to have any adverse impacts on Hydro One's transmission customers in terms of reliability and quality of service, subject to the requirements specified in the CIA. On September 24, 2015 the Applicant also filed a letter from Hydro One dated September 23, 2015, in response to proposed changes to the number and size of turbines. The Hydro One letter confirmed the changes to the application do not:

``significantly impact the results of the CIA and therefore no CIA addendum will be issued by Hydro One``.

Positions of the Parties With Respect to the Impacts on Reliability and Quality of Transmission Service

APAI submitted that the leave to construct should not be granted or it should be conditional on the OEB reviewing the most up to date SIA and CIA reports that state the project will have no adverse impact on reliability or quality of electrical service. The Applicant argued any potential impacts on reliability have been considered through the IESO's SIA process and Hydro One's CIA process and will be addressed through Windlectric's compliance with requirements set out in the final version of both reports, as well ongoing compliance with the terms of the connection agreement that will eventually govern the relationship between Windlectric and Hydro One.

OEB Findings

Based on the conclusions within the IESO's SIA Report dated April 18, 2012 and Addendum Report, Hydro One's CIA Report of April 16, 2015 and September 23, 2015 letter, the OEB agrees that the proposed connection will not adversely impact the interests of consumers with respect to quality or reliability of electrical service, provided the Applicant fulfills the conditions in the SIA and CIA.

4.3 Promotion of the Use of Renewable Energy Sources

Section 96(2) of the Act requires the OEB to consider the promotion of the use of renewable energy sources in a leave to construct application. The generation source associated with the Proposed Transmission Facilities is wind power and is thus a form of renewable energy, a factor which must be considered by the OEB in this application.

The Applicant holds a 20-year contract with the former OPA (now merged with the IESO), for its wind energy generation facility under the FIT Program. The Generation Project will contribute approximately 75 MW of renewable energy generation capacity towards Ontario's energy supply mix, consistent with the Government of Ontario's objective of increasing the amount of renewable generation. The Proposed Transmission Facilities are required to transmit electricity from the Generation Project to the provincial electricity grid.

APAI argued that the Proposed Transmission Facilities will not further the Government of Ontario's policies with respect to renewable generation because the Applicant's FIT Contract will be cancelled due to the length of time it will take to construct and reach the Commercial Operation Date. APAI argued that the project is not likely to be financially viable if it does meet its Commercial Operations Date.

OEB Findings

The former OPA, administering the FIT program as required by the Government of Ontario, awarded a FIT contract to the Applicant in February 2011. The approval of the Proposed Transmission Facilities would be consistent with the policies of the Government of Ontario favouring the promotion of the use of renewable energy sources in that it would enable transmission of the renewable energy to the provincial electricity grid. The leave to construct approval is predicated on the need to connect the renewable generation facility to the provincial grid.

4.4 Form of Agreement Offered to Landowners

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

The Applicant seeks approval of the forms of land agreements which were filed as Exhibit E, Tab 1, Schedule 2, Appendix A through D of its Application.

In each application seeking approval under section 97, the OEB reviews the forms of agreements filed by the Applicant in order to satisfy itself that the form of agreement, which represents the initial offering to an affected landowner, is acceptable. Once the OEB is satisfied with the initial offering to an affected landowner, the parties are free to negotiate terms to meet their respective needs.

The Applicant states that each of the private landowners with whom they entered into an agreement was served with a Notice in this proceeding. The Notice advised them of the forms of land agreement that would be at issue. None of these landowners requested Intervenor status, filed letters of comment, or expressed any concerns with the forms of land agreements offered to them.

APAI argued the Applicant's forms of lease and easement agreements do not comply with Board's Filing Requirements for Electricity Applications (as amended July 31, 2014)⁸. Specifically, the Applicant's forms of lease or easement agreements do not include Decommissioning nor Independent Legal Advice (ILA) clauses as required by Appendix A of the Filing Requirements. The Applicant's counter argument to this point is that the land agreements were offered to, negotiated with and executed by the impacted landowners several years before the OEB amended its Requirements in July 2014 to include Appendix A.

The Applicant submits that it has secured all the necessary private property land rights including a recent amendment to the land agreement for the project Substation Property with the relevant landowner on March 15, 2015. The execution of the amendment makes APAI's submissions on the land agreement for the Project Substation now moot.

OEB Findings

The OEB notes that all of the affected private landowners have executed agreements with the Applicant. None of these landowners indicated to the OEB that they have issues with the form of agreement offered to them by the Applicant. The OEB approves the form of agreement offered to private landowners but notes that its approval in this context does not necessarily imply that the OEB would, or would not, approve this form of agreement in any future proceeding.

The OEB does not consider the lack of alignment with the current Filing Requirements elements pertaining to forms of agreement to be sufficient cause for rejection of the forms of agreement. The July 2014 amendments to the filing requirements were

⁸ OEB's Filing Requirements for Electricity Applications (as amended July 31, 2014) Appendix A.

incremental and evolutionary in nature. The OEB did not establish an expectation that existing executed agreements that did not contain the new requirements should be re-negotiated.

4.5 Municipal and Provincial Crossings

The Applicant has applied under section 101 of the Act for an order approving the construction of certain transmission facilities upon, under or over a highway, utility line or ditch.

The proposed route of the Transmission Line requires one municipal overhead road crossing Front Road on Amherst Island and one provincially public overhead road crossing Bath Road /Highway 33. In both cases, the Applicant has statutory rights to cross the road for purposes of the Transmission Line pursuant to s. 41 of the Electricity Act. With respect to the crossing of Front Road, the Applicant submits that it is advanced in its efforts to negotiate a road use agreement with the owner of the road, Loyalist Township. The Applicant will require an Encroachment Permit from the Ministry of Transportation (MOT) for Bath Road/Highway 33 crossing.

OEB Findings

For the reasons provided above the OEB finds that it is in the public interest to authorize the Applicant, pursuant to section 101 of the Act, to construct the crossings of the roads by the Proposed Transmission Facilities in accordance with its application and required agreements and permits.

5 OEB DECISION

The OEB finds that the Proposed Transmission Facilities serve a public interest and therefore grants Windlectric leave to construct the Proposed Transmission Facilities pursuant to section 92 of the Act, and to authorize the construction of the proposed road crossings under section 101 of the Act. The OEB approves the forms of agreements offered to landowners submitted to it by Windlectric pursuant to section 97 of the Act.

The OEB notes that Windlectric is responsible for obtaining all necessary approvals, permits, licences, certificates, land agreements, connection agreements and easement rights required to construct, operate and maintain the Proposed Transmission Facilities.

The OEB's Decision is subject to conditions set out in the Order below.

6 ORDER

THE ONTARIO ENERGY BOARD ORDERS:

1. Windlectric, is granted leave, pursuant to section 92 of the Act, to construct the Proposed Transmission Facilities in accordance with the OEB's Decision in this proceeding and subject to fulfillment of the requirements of the SIA and CIA and Windlectric commencing construction within 12 months of the date of the OEB's Order.
2. Pursuant to section 97 of the Act, the OEB approves the forms of agreement offered to landowners by Windlectric.
3. Pursuant to section 101 of the Act, the OEB authorizes Windlectric to construct the proposed road crossings for the Proposed Transmission Facilities.
4. APAI shall file with the OEB no later December 18, 2015 its cost claim in accordance with the OEB's Practice Direction on Cost Awards.
5. Windlectric may object to the cost claims no later January 6, 2016 by filing its submission with the OEB and delivering a copy to APAI.
6. If an objection to the cost claim is filed by Windlectric, APAI will have until January 13, 2016 to file a reply submission to the OEB, with a copy to Windlectric.
7. Windlectric shall pay the OEB's costs incidental to this proceeding immediately upon receipt of the OEB's invoice.

All filings with the OEB must quote the file number EB-2014-0300, and be made through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/> , and consist of two paper copies and one electronic copy in searchable/unrestricted PDF format. Filings must be received by the OEB by 4:45 p.m. on the stated date. Parties should use the document naming conventions and document submission standards outline in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry> . If the web portal is not available, parties may e-mail their documents to the attention of the OEB Secretary at BoardSec@ontarioenergyboard.ca.

DATED at Toronto December 10, 2015

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary