



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

DECISION

EB-2016-0126 AND EB-2016-0143

**NR CAPITAL GENERAL PARTNERSHIP AND
FWRN LP**

**Motions to extend a time limit and to review
and vary a Decision and Order granting
leave to construct (EB-2013-0203)**

**BEFORE: Christine Long
Vice Chair and Presiding Member**

June 2, 2016

Introduction and Summary

This is a decision of the Ontario Energy Board (OEB) in response to two notices of motion filed by NR Capital General Partnership and FWRN LP (collectively, the Applicant) in March and April, 2016.

Through the motions, the Applicant first seeks an order of the OEB extending the time limit directed by Rule 40.03 of the OEB's *Rules of Practice and Procedure* (the Rules) within which to bring a motion to review and vary a final decision and order of the OEB.

If the OEB permits an extension to the time limit, the motions seek an order varying the OEB's decision and order in proceeding EB-2013-0203, issued July 3, 2014 for Leave to Construct (the LTC Order), wherein the OEB granted leave to construct two substations, a transmission line, a transition station and an interconnect station in Haldimand County and Niagara Region (collectively, the Transmission Facilities).

The OEB has considered the two motions. The OEB denies the requests for an extension of time. The motions are dismissed.

The Process

On March 14, 2016 and April 1, 2016, the Applicant filed two notices of motion, pursuant to Rules 40.01 and 40.03 of the Rules. Each motion sought to vary the LTC Order so that the route of the Transmission Facilities could be altered. Each motion deals with a different section of the route. The Applicant requested that the two motions be considered separately. The Applicant also requested that the OEB extend the 20 calendar day timeframe for a motion to be filed and served (as set out by Rule 40.03). The Applicant claims that no one will be adversely affected in a material way by the outcome of the motions. Therefore, the Applicant requests that the OEB exercise its authority under s. 21(4)(b) of the *Ontario Energy Board Act, 1998* to dispose of the motions without a hearing.

The LTC Order

The OEB issued the LTC Order on July 3, 2014. In that Order, the OEB granted Niagara Region Wind Corporation leave to construct the Transmission Facilities. The purpose of the Transmission Facilities is to transmit power generated by the Niagara Region Wind Farm (a 230 MW renewable energy generation facility) to the provincial electricity grid. The OEB issued the LTC Order on three conditions, namely: (i) the existence of a FIT

contract between the Niagara Region Wind Corporation and the Ontario Power Authority, (ii) fulfillment of a system impact assessment and customer impact assessment, and (iii) a construction commencement date of July 3, 2014. By vary order issued June 26, 2015, the OEB extended the construction commencement date to January 3, 2016. The extension was granted because of various construction delays, including a delay in receiving a Renewable Energy Approval (REA).

In separate proceedings, on September 3, 2015 (in proceeding EB-2015-0183) and then, again, on November 26, 2016 (in proceeding EB-2015-0290) the OEB issued decisions and orders transferring the authorization granted by the LTC Order from Niagara Region Wind Corporation to the Applicant, in order to accommodate certain corporate restructurings.

The Current Motions to Review and Vary

(i) Notice of Motion filed March 14, 2016 (re: The Highway 3 Bypass)

On March 14, 2016, the Applicant filed a notice of motion to review and vary the LTC Order, seeking to modify the route of the Transmission Facilities by bypassing Provincial Highway 3 and, to instead, cross over one private landowner's property. The Applicant submits that the modification is necessary to accommodate an Ontario Ministry of Transportation (MTO) request that the Applicant not build the transmission line along Highway 3. The Applicant provided an e-mail dated December 15, 2015 from the MTO in support of its request to vary. The Applicant requested that the OEB make its order conditional on the Applicant receiving an REA amendment required for the Highway 3 bypass. Subsequently, on May 13, 2016, the Applicant filed a letter indicating that it had received the REA amendment on May 12, 2016.

(ii) Notice of Motion filed April 1, 2016 (re: The Smithville Modification)

On April 1, 2016, the Applicant filed another notice of motion to review and vary the LTC Order, seeking to modify approximately a 2.4 km portion of the route. The Applicant indicates this second motion is required in order to accommodate a request from the Municipality of West Lincoln that the Applicant not build the transmission line in proximity to an area proposed for future urban expansion.

From the evidence, it appears that the Smithville Modification would require at least the following additional approvals: (i) approval from the Municipality of West Lincoln to locate a portion of the transmission line within an unopened road allowance, (ii) approval by Hydro One Networks Inc. (Hydro One) to install a section of transmission line underground beneath an existing Hydro One transmission line, and (iii) approval by Canadian Pacific Railway for an above ground crossing of its rail line.

The Applicant submits that Hydro One and Canadian Pacific Railway approved the original route crossings and that it is now in the process of submitting the necessary documentation to both Hydro One and Canadian Pacific Railway to obtain approval for the modified crossings. The Applicant submits that neither Canadian Pacific Railway nor Hydro One will be adversely affected in a material way due to change in location of the crossings.

On May 25, 2016, the Applicant filed evidence indicating that it received its approval on May 6, 2016 from the Ministry of the Environment and Climate Change in respect of the REA Amendment required for the Smithville Modification. On May 25, 2016, the Applicant provided further clarification in respect to the routing of the Smithville Modification, stating that a portion of the transmission line would be underground.

Findings

The OEB may make a determination in respect of a request to extend a time limit under the Rules without a hearing. The OEB has done so in respect of the two motions brought by the Applicant.

The Rules provide that a person may bring a motion to the OEB to review all or part of a final order or decision, and to vary, suspend, or cancel the order or decision. However, Rule 40.03 specifically provides that any such motion shall be brought within 20 calendar days of the date of the order or decision. The 20 day period within which to bring such a motion establishes a right available to a party impacted by an order or decision if that party wishes to seek to vary an order or decision of the OEB.

While Rules 1.03 and 7.01 of the Rules provide the OEB with the power to extend or abridge time requirements, this power must be used only in appropriate and limited circumstances. The *Statutory Powers and Procedures Act*, which sets minimum standards for procedural compliance by administrative tribunals such as the OEB, provides that any review of a tribunal's decision or order "shall take place within a

reasonable time after the decision or order is made”¹. In issuing the Rules, the OEB has determined that, for a motion seeking a review and variance of an OEB decision or order, the reasonable amount of time within which to bring a motion for review is 20 days.

In considering whether the OEB should grant the request for the extension of time, the OEB has considered the submissions of the Applicant with respect to the extension request, namely the circumstances leading to the delay and the nature of the relief being sought.

a) Circumstances

In this case, the LTC Order was issued on July 3, 2014. The two current motions to review and vary were filed almost two years after the LTC Order was issued.

In deciding whether to allow the two motions to proceed at this late date, the OEB has considered the specific circumstances of this case. The Applicant states that the reason for the delay in bringing the motions is that it needed time to assess and study the requested amendments to the transmission line. It is not clear why the Applicant was unaware that the requested changes to the transmission route would be necessary when it conducted its inquiries as part of the original application.

b) Nature of the relief sought

Both motions to review seek to alter the route of the transmission line approved by the OEB in the LTC Order almost two years ago. One proposed amendment represents an alteration of 335 m and would impact at least one new landowner. The second amendment would constitute an alteration of a separate 2.4 km of the transmission route and would also impact at least one new landowner and require approvals from each of Hydro One, Canadian Pacific Railway and the Municipality of West Lincoln. Confirmation from the IESO and Hydro One that the results of the SIA and CIA remain valid could also be necessary.

The OEB notes that these motions to vary are the fourth and fifth proceedings related to the Transmission Facilities subsequent to the granting of the LTC Order. The three previous proceedings were also commenced beyond the 20 day deadline. In the previous three proceedings the Applicant sought to extend the deadline for commencement of construction of the transmission line, and to change the identity of the applicant to whom the LTC Order was granted as a result of corporate

¹ *Statutory Powers and Procedures Act*, section 21.2 (2)

restructurings. The relief requested was granted in those three proceedings. The OEB considers those requests to be distinguishable from the relief asked for in the two motions now before it.

While the Applicant may argue that new information or a change in circumstances allows it to avail itself of the motion to review and vary relief in the Rules, the OEB does not find that the re-routing of a transmission line by way of a motion to review and vary, almost two years after the underlying leave to construct order was granted, is appropriate.

A motion to review and vary a final decision or order should only be brought when there are issues as to the correctness of a final decision or order. The motion to review process was not established in order to allow a party to seek new or significantly amended relief. The types of proposed amendments sought by the Applicant should be brought forward by way of amended application(s).

For the reasons set out herein, the motions are dismissed.

DATED at Toronto June 2, 2016

ONTARIO ENERGY BOARD

Original Signed By

Christine Long
Vice Chair and Presiding Member