



EB-2016-0196

FWRN LP and NR Capital General Partnership

Application for Leave to Construct amending the relief granted in EB-2013-0203

PROCEDURAL ORDER NO. 1

July 13, 2016

FWRN LP and NR Capital General Partnership (Applicants) filed an application on June 17, 2016 for leave to construct under sections 92 and 96(2) of the *Ontario Energy Board Act, 1998* (Act). Through the application, the Applicants seek approval for two modifications to the transmission line route that is being constructed in Haldimand County and Niagara Region pursuant to the Leave to Construct Order issued by the OEB on July 3, 2014 in proceeding EB-2013-0203 (LTC Order). The Applicants request that the application be determined on an expedited basis without a hearing pursuant to section 21 of the Act. The application has been assigned file no. EB-2016-0196.

At the time of filing the application, the transmission line and related facilities (Transmission Facilities) are approximately 85% completed, with 82% of the approximately 44 kilometer transmission line already built. Once completed, the Transmission Facilities will connect the Niagara Region Wind Farm, a 230 MW renewable energy generation facility, to the IESO-controlled grid. The affected municipalities are the townships of West Lincoln, Lincoln, and Wainfleet.

The first modification to the transmission line route originally approved in the LTC Order is an approximately 300 meter change to accommodate the interests of the Ministry of Transportation (the Highway 3 Bypass). The other modification is an approximately 2.4 kilometer change to accommodate the interests of the Township of West Lincoln (the Smithville Bypass).

Highway 3 Bypass

As originally approved, a portion of the transmission line route would run north on Wainfleet Dunnville Townline Road and then turn east and run along Highway 3. The proposed Highway 3 Bypass would have the transmission line route avoid Highway 3 by crossing over a piece of private property. The Applicants have entered into a land use agreement with the owner of this private property, in a form approved by the OEB.

The Applicants state that there are no utility crossings along the Highway 3 Bypass, that the Highway 3 Bypass has obtained a Renewable Energy Approval (REA) amendment approval from the Ministry of Environment and Climate Change, and that the REA amendment has not been appealed to the Environmental Review Tribunal. The Applicants confirm that the IESO and Hydro One have indicated that there will be no impact on, respectively, the System Impact Assessment (SIA) and Customer Impact Assessment (CIA) due the reduction in transmission line length if the proposed Highway 3 Bypass modification is approved.

The Applicants state that all electrical equipment and systems for the Highway 3 Bypass will be designed in accordance with current codes and standards, including the Ontario Electrical Safety Code issued by the Electrical Safety Authority (ESA).

The Applicants filed a letter of comment on June 28, 2016 from the Ministry of Transportation in support of the Highway 3 Bypass.

The Applicant states that no one will be adversely affected in a material way by the OEB's decision regarding the Highway 3 Bypass.

Smithville Bypass

As originally approved, a portion of the transmission line route would run through a new urban development area planned in the community of Smithville, which is located in the Township of West Lincoln. The proposed Smithville Bypass would change the route of the transmission line such that it would bypass the new urban development area in Smithville.

If approved, the Smithville Bypass would cross properties owned by Hydro One Networks Inc., and a private landowner. It would also cross a Canadian Pacific Railways (CP) rail line and an unopened road allowance belonging to the Township of West Lincoln. The Applicants state that they have secured, or are in the process of securing, the rights to construct over or beneath each of these properties as follows: the Applicant has received approval from CP for the rail crossing; the Applicants have

submitted drawings to Hydro One for the underground crossing beneath the existing Hydro One transmission line identified within the proposed route and are awaiting approval together with approval from Hydro One for a small crossing over a second area (PIN 46055-0086) owned by Hydro One; the Applicants have secured land rights from the private landowner through an option agreement (entered March 2016) in a form approved by the OEB; and the Applicants are party to a Road Use Agreement with the Township of West Lincoln.

The proposed Smithville Bypass also crosses an unopened road allowance currently used by three landowners for access to their properties. The Applicants filed a letter on July 8, 2016 indicating these three landowners (the Three Landowners) would not be impacted during construction. The Applicants further state the unopened road allowance is used by persons accessing a recreational trail. The Applicants do not address, in the letter or otherwise, whether the Three Land Owners have been notified of the application or the proposed transmission line route modifications.

The Applicants state that all electrical equipment and systems for the Smithville Bypass will be designed in accordance with current codes and standards, including the Ontario Electrical Safety Code issued by the ESA.

The Applicants state that the IESO and Hydro One have indicated that there will be no impact on either the SIA and CIA, respectively, due the reduction in transmission line length resulting from the Smithville Bypass.

The Applicants obtained their REA approval on May 6, 2016 from the Ministry of Energy and Climate Change, and have confirmed that the amendment has not been appealed to the Environmental Review Tribunal. The Applicants submit the REA Amendment process required extensive consultation with local residents. Notices were published in ten local newspapers, the West Lincoln Road Use Agreement is posted on the Township of West Lincoln's website, and discussions regarding the proposed change in route has been set out in municipal council minutes, which are posted on the Township of West Lincoln's website. The Applicants state that all landowners along the route of the Smithville Bypass have received tree trimming notices.

The OEB received a letter of comment on June 28, 2016 from the Township of West Lincoln supporting the Smithville Bypass.

The Applicants state that no one will be adversely affected in a material way by the OEB's decision regarding the Smithville Bypass.

Findings

Merits

Section 21 (4) of the OEB Act provides, in part, that the OEB may dispose of a proceeding without a hearing where the OEB determines that no person, other than the applicant, will be adversely affected in a material way by the outcome of the proceeding. The section requires that the OEB consider whether any person, not just a landowner, will be adversely affected by the outcome of the proceeding.

In seeking the two modifications to a previously approved transmission line route without a hearing, the Applicants state that no party will be adversely affected in a material way. The Applicants have provided the OEB with details regarding the dealings that they have had with affected parties.

The OEB has reviewed the information pertaining to the affected parties in relation to the proposed modifications to the route of the transmission line. In respect of the Smithville Bypass, the OEB notes that the Applicants have not filed evidence that notice of this proceeding has been provided to those who use the unopened road allowance.

The OEB is satisfied that the Applicants are not able to serve notice upon those using the recreation trail as these individuals are most likely unknown to the Applicants.

However, the Applicants have also not provided evidence of notice to the Three Landowners who rely on access to their properties through the unopened road allowance. Paragraph 55 of the application provides, in part, as follows:

Although there may be a small impact on those currently using the Unopened Road Allowance during the construction of the transmission line, this impact will not, ***in the submission of the Applicants***, amount to a material adverse effect on those using the Unopened Road Allowance.
[emphasis added]

The Applicants state that the Three Landowners will have access to the unopened road allowance during construction. This statement does not contain any specific information related to the severity or duration of impact which would allow the OEB to make an assessment as to whether the Three Landowners will be materially adversely affected by the proposed modification. The OEB must base its decisions on evidence provided to it by the Applicants. It is not clear to the OEB why evidence demonstrating notice to the Three Landowners is not contained within the application. The Applicants have

also not confirmed that there will be no impact post construction. Presumably, the Three Landowners are known to the Applicants and could have easily been provided with notice.

The Applicants appear to rely on notice given through the REA process and in the form of a tree trimming notice. The OEB does not find notice given in relation to a separate process, in this case the REA process, to constitute sufficient notice as it relates to an OEB proceeding. The two are separate and distinct matters dealing with separate and distinct approvals. The Applicants have not filed the tree trimming notice referred to in its application. As a result, it is unclear to the OEB whether the notice would provide sufficient detail to the Three Landowners to advise them of the effect of the change to the transmission line.

In the light of the foregoing, the OEB orders the Applicants to give notice to the Three Landowners who rely on access through the unopened road allowance and who may be impacted by the proposed Smithville Bypass, and to allow them an opportunity to provide the OEB with comments on whether they will be materially adversely impacted.

Timing

The Applicants have asked the OEB to consider the application on an expedited basis.

On March 14, 2016 and April 1, 2016, the Applicants filed motions to review in relation to the two modifications seeking to vary the LTC Order issued July 3, 2014. On June 2, 2016 the motions to review were dismissed by the OEB on the basis that they failed to meet the threshold test for a motion to review.

On June 17, 2016, the Applicants filed the application to seek to modify the LTC Order. The OEB received additional supporting information and evidence related to the application on June 21, 28, 29, July 4 and July 8.

On July 11, 2016, the Applicants wrote to the OEB to reiterate their position that the OEB consider the application on an expedited basis. In their letter, the Applicants state that "Given the time that had passed since the Vary Motions were applied for (over 3.5 and 3 months from today's date), the current application requested that the Board proceed with this application on an expedited basis."

The OEB is aware of the Applicants' request for an expeditious decision on its application. However, the OEB can only proceed to consider whether an application can be heard without a written hearing where it is satisfied that no person is materially

adversely impacted. On the basis of the record as it stands, the OEB is unable to make this determination. The onus rests with the Applicants to ensure that the OEB has the evidence necessary to evaluate and make a determination in respect of an application. The Applicants have within their control the ability to facilitate the timely processing of the application by providing the OEB with the information required to make an assessment under section 21(4).

IT IS THEREFORE ORDERED THAT:

1. The Applicants shall serve a copy of this Procedural Order No. 1, together with pages 1-14 of the application, to the Three Landowners who rely on access through the unopened road allowance and who may be impacted by the proposed Smithville Bypass by July 20, 2016.
2. The Applicants shall file notice of service with the OEB upon completion of item #1 above.
3. Should they wish to do so, the Three Landowners may file written submissions on the application, as it relates to the Smithville Bypass aspect only and whether the proposed modifications to the transmission line will cause them to be materially adversely affected, within ten calendar days of being served.

All filings to the OEB must quote the file number, EB-2016-0196, and must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **July 13, 2016**

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary