



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

DECISION AND ORDER

EB-2016-0008

SP BELLE RIVER WIND LP

**Application for Leave to Construct Transmission Facilities in the
Town of Lakeshore in the County of Essex, Ontario**

BEFORE: Emad Elsayed
Presiding Member

Susan Frank
Member

September 22, 2016

1 INTRODUCTION AND SUMMARY

On January 7, 2016, SP Belle River Wind LP (the Applicant) applied to the Ontario Energy Board (OEB) under section 92 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (Act) for an order or orders granting leave to construct (LTC) transmission facilities in the Town of Lakeshore in the County of Essex (Application). The Applicant subsequently filed amendments to its Application on July 8, 2016 to relocate the transmission line underground (Underground Option) along the same route as described in the Application.

The Application also includes the forms of land agreements offered to affected landowners, which must be approved by the OEB pursuant to section 97 of the Act.

For the reasons set out below, the OEB grants the Application as amended, subject to the conditions of approval contained in the Order.

1.1 Proposed Transmission Facilities

The transmission facilities are required to connect a renewable wind generation facility known as the Belle River Wind Project (Wind Farm) to the Independent Electricity System Operator (IESO)-controlled grid. The contract capacity of the Wind Farm is up to 100 MW.

The proposed transmission facilities include:

- a 230 kV/34.5 kV substation (Joe Byrne Substation) that will step up power from the Belle River Wind Project;
- a 230 kV switching station (Brody Switching Station) at the interconnection point to Hydro One's transmission system; and
- a three-phase single 230 kV circuit underground transmission line (Transmission Line) that will run approximately 7 kilometres from the Joe Byrne Substation to the Brody Switching Station.

The proposed transmission facilities described above are collectively referred to in this Decision and Order as the Transmission Facilities.

The Applicant entered into a 20-year Power Purchase Agreement with the Ontario Power Authority (the OPA), now the IESO, on September 22, 2014.

1.2 The OEB'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 permission to build 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 a section 92 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, Schedul.D, s.16.

The provisions of section 96 (2) define the parameters within which the OEB considers the public interest when determining whether to grant leave to construct transmission facilities to an applicant. Other considerations relating to the construction of a generation facility, including environmental impacts, are outside the OEB's jurisdiction. However, the OEB's approval of a LTC application is contingent on the Applicant obtaining all necessary permits and approvals including environmental approvals in order to proceed with construction of the Wind Farm and the Transmission Facilities.

Environmental matters with respect to the Wind Farm are within the scope of the Renewable Energy Approval (REA) process, which falls under the jurisdiction of Ministry of the Environment and Climate Change (MOECC). The Applicant has indicated that it has fulfilled the REA requirements.

The Act also gives the OEB oversight of the form of 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:

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 a form approved by the Board.

2 THE PROCESS

The OEB issued a Notice of Application and Hearing on February 3, 2016 (Notice) and directed the Applicant to serve and publish the Notice inviting participation from interested parties. The Applicant requested pursuant to section 34 of the OEB's Rules of Practice and Procedure that the proceeding be conducted by way of a written hearing, which the OEB granted.

The OEB issued Procedural Order No. 1 on March 24, 2016, which granted intervenor status to the IESO and required written interrogatories pertaining to the Applicant's pre-filed evidence to be filed with the OEB and served on the Applicant on or before April 8, 2016.

The Applicant subsequently filed written responses to the interrogatories with the OEB and served them on the IESO on April 15, 2016.

On May 19, 2016, the Applicant filed a letter requesting that the OEB's decision to specifically approve the construction of the Underground Option within the existing route as described in the Application. The Applicant stated that, "adjacent landowners to the transmission line route have communicated a preference for the Underground Option".

On July 8, 2016, the Applicant filed amendments to its Application to allow for the Underground Option, which included supplementary evidence. This supplementary evidence included a letter of support for the Underground Option signed by 17 of 24 landowners whose homes are adjacent to, but not directly affected by, the proposed transmission route.

The OEB issued procedural Order No. 2 on August 25, 2016, which requested the Applicant file with the OEB evidence of the process that it followed to contact the 7 adjacent landowners who had not signed the letter of support for the Underground Option by August 31, 2016.

On August 31, 2016 and September 6, 2016, the Applicant filed evidence that it had obtained support from all 7 remaining adjacent landowners for the Underground Option.

OEB Staff made its final submission on September 8, 2016 in accordance with the requirements of Procedural Order No. 2 and recommended that, based on the evidence filed by the Applicant, the Application be granted as amended.

3 STRUCTURE OF THE DECISION

The OEB has examined the Application as amended based on its jurisdictional mandate in terms of interests of consumers with respect to pricing, reliability and quality of electricity service as well as promotion of the use of renewable energy sources. The OEB also examined the form of land agreements offered to affected landowners and crossings.

4 ANALYSIS OF THE APPLICATION

4.1 Interests of Consumers with Respect to Pricing

The Applicant states in its pre-filed evidence that “all costs for the proposed Transmission Project, including any incremental costs related to the Underground Option, will be borne by the Applicant”.

In a letter submitted on May 19, 2016, the Applicant confirmed that the proposed Transmission Facilities will not affect electricity transmission rates in Ontario.

OEB Findings

The former OPA awarded the Applicant a contract for the purchase of electricity generated by its proposed Wind Farm through the Ontario Feed-in Tariff (FIT) Program. The Applicant stated that the proposed Transmission Facilities are necessary to connect the contracted renewable electricity being generated by the Wind Farm to the Hydro One transmission grid.

In this application, the evidence indicates 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, which are required for connecting and transmitting the electricity generated by the Wind Farm to the IESO controlled transmission grid. Accordingly, the OEB has no concerns related to the Transmission Facilities with respect to the price of electricity service.

4.2 Reliability and Quality of Electricity Service

System Impact Assessment (SIA)

The IESO completed a final SIA for the Wind Farm and connection of the Transmission Facilities dated December 11, 2015. The IESO concluded that the proposed connection of the Wind Farm and Transmission Facilities will not result in a material adverse impact on the reliability of the integrated power system. The Applicant also received a Notification of Conditional Approval of Connection Proposal (Notification) from the IESO on December 11, 2015.

On June 24, 2016, the IESO issued a final addendum to the SIA in response to information the IESO received from the Applicant in respect of the Underground Option. The SIA Addendum requires the Applicant to meet all the specific and general requirements in the original SIA report and additional specific requirements in respect of inductive reactive power compensation as described on page 2 of the SIA Addendum.

The IESO concluded that the proposed underground connection of the Transmission Facilities "is expected to have no material adverse impact on the reliability of the integrated power system", if the Applicant meets the requirements of the original SIA and the Addendum. On June 24, 2016, the Applicant also received from the IESO a Notification of Addendum of Conditional Approval of Connection Proposal based on the SIA Addendum for the Underground Option.

On September 1, 2016, the IESO filed a letter with the OEB indicating it would not be filing a final submission in this application.

Customer Impact Assessment (CIA)

Hydro One completed a final Customer Impact Assessment Report (CIA) for the Wind Farm and connection of Transmission Facilities on December 11, 2015. Hydro One has advised the Applicant that it had no concerns with the changes made to the original Application pursuant to the requirements outlined in the SIA Addendum and does not need to update the CIA for the Underground Option.

OEB Findings

Based on the conclusions in the IESO's SIA Report and SIA Addendum Report as well as Hydro One's CIA Report, the OEB finds that the proposed connection will not adversely impact the interests of consumers with respect to the quality or reliability of electrical service, provided the Applicant fulfills the conditions in the SIAs and CIA.

4.3 Policies of the Government on the Promotion of the Use of Renewable Energy Sources

The evidence filed in the Application indicates that the Wind Farm will contribute up to 100 MW of clean, renewable energy to the provincial electricity grid. The Wind Farm will further the Ontario Government's policy objective to increase the amount of renewable energy being added to the Province's energy supply mix.

The Applicant is subject to the requirements of the Renewable Energy Approval (REA) process under Ontario Regulation 359/09 (REA Regulation) under the *Environmental*

Protection Act. The final REA submission package for the Wind Farm project was submitted to the MOECC on May 29, 2015 and was deemed complete on July 29, 2015. The MOECC issued the Applicant's REA on January 13, 2016 and no legal appeals permitted under Section 142.1 of the *Environmental Protection Act* and the REA Regulation were filed with the Ontario Environmental Review Tribunal to challenge the issuance of the REA during the time period prescribed by statute. The Applicant stated that, "the issued REA contemplates both an above-ground and underground transmission line".

OEB Findings

The former OPA, administering the FIT program as required by the Government of Ontario, awarded a FIT contract to the Applicant in September 2014. The approval for construction of the proposed Transmission Facilities would be consistent with the policies of the government regarding promotion 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 (Wind Farm) to the provincial grid.

4.4 Forms of Land Agreement

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 filed the forms of land agreements offered to the affected landowners in Exhibit E, Tab 1, Schedule 2, of its Application.

In an 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 only two landowners are impacted by the proposed Transmission Facilities and that it has entered into binding lease agreements with respect to both Joe Byrne Substation and the Brody Switching Station in accordance with the OEB Filing Requirements for Transmission and Distribution Applications.

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.

4.5 Section 101 of the Act

The Applicant has not 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.

In the supplementary evidence filed by the Applicant for the Underground Option the Applicant indicates the Ontario Ministry of Transportation (MTO) is aware of the Underground Option and issued an Encroachment Permit allowing the Applicant to drill two boreholes as part of a geotechnical investigation in support of the Underground Option. The Applicant has confirmed it will file an application under section 101 of the Act if it does not receive approval to cross Highway 401.

OEB Findings

The OEB is satisfied that the Applicant is taking the necessary steps to obtain MTO approval to cross Highway 401 for the Underground Option.

4.6 Adjacent Landowners and Municipal Road Use Agreement

The Application indicates that a portion of the proposed 230 kV transmission line passes by 24 homes along the road allowance on French Line Road just north of County Road 46 in the County of Essex. The Applicant submitted evidence of a letter of support for the Underground Option signed by 17 of the 24 landowners whose homes are adjacent to, but not directly affected by, the Transmission Line. In response to the OEB's Procedural Order No.2 the Applicant filed evidence that it had received support from the remaining 7 landowners.

The Town of Lakeshore approved a Road Use Agreement, which specifically permits the underground installation within the Town's road allowances. A resolution from the Council for the County of Essex authorizing the execution of the Road Use Agreement between the county and the Applicant was passed at the August 10, 2016 council meeting.

OEB Findings

The OEB is satisfied the Applicant has demonstrated that it has support from both the Municipality in the form of a Road Use Agreement and all adjacent landowners to the Transmission Line for the Underground Option.

4.7 Other Approvals

The Applicant's filed evidence indicates the Transmission Facilities will be constructed and operated in accordance with all applicable technical codes and standards, including the requirements of the *Ontario Electrical Safety Code*, the *Occupational Health and Safety Act*, the *Transmission System Code* and the *Market Rules for the Ontario Electricity Market*, including those with respect to metering.

5 DECISION

The OEB finds that the proposed Transmission Facilities serve a public interest and therefore grants SP Belle River Wind LP leave to construct pursuant to section 92 of the Act. The OEB approves the forms of agreements offered to landowners pursuant to section 97 of the Act.

This approval is conditional on SP Belle River Wind LP obtaining all necessary approvals, permits, licences, certificates, land agreements, municipal road use agreements, connection agreements and easement rights required to construct, operate and maintain the proposed Transmission Facilities. SP Belle River Wind LP shall provide copies of all such written approvals, permits, licences and certificates upon the OEB's request.

SP Belle River Wind LP shall advise the OEB of any proposed material change in the Transmission Facilities, including but not limited to changes in: the proposed route, construction schedule or the necessary environmental assessment approvals, including the REA, and all other approvals, permits, licences, certificates and rights required to construct the Transmission Facilities.

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

6 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. SP Belle River Wind LP 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 all other necessary approvals, permits, licences and certificates required to construct, operate and maintain the proposed Transmission Facilities.
2. Unless otherwise ordered by the OEB, authorization for Leave to Construct shall terminate on September 21, 2017, unless construction has commenced prior to that date.
3. The OEB approves the forms of agreement offered to landowners by SP Belle River Wind LP pursuant to section 97 of the Act.
4. SP Belle River Wind LP shall advise the OEB of any proposed material change in the Transmission Facilities, including but not limited to changes in: the proposed route, construction schedule or the necessary environmental assessment approvals, including the REA, and all other approvals, permits, licences, certificates and rights required to construct the Transmission Facilities.
5. SP Belle River Wind LP shall pay the OEB's costs incidental to this proceeding immediately upon receipt of the OEB's invoice.

DATED at Toronto September 22, 2016

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary