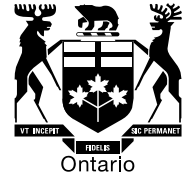


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BY E-MAIL

August 31, 2017

To: Mr. Wayne Fairbrother
Mr. Ray Ford
Ms. Anne Dunbrille
Mr. Bill Peel
Ms. Liz Driver and Mr. Edwin Rowse

**Re: Leave to construct application by wpd White Pines Wind Incorporated
(White Pines), OEB File No. EB-2013-0339 (as varied by EB-2016-0268)**

Introduction

The Ontario Energy Board (OEB) recently received correspondence from each of Mr. Wayne Fairbrother, counsel to the County of Prince Edward (the County); Mr. Ray Ford; Ms. Anne Dunbrille; Mr. Bill Peel; and Ms. Liz Driver and Mr. Edwin Rowse. Each of the letters and emails raises similar concerns in respect of the construction of the White Pines wind generation project in Prince Edward County and of the transmission line and related transmission assets planned to connect the generation project to the provincial transmission grid. This letter is provided by the OEB as a common response to each of your letters and emails. The OEB is also providing a copy of this letter to White Pines and to each of those who were copied on your various items of correspondence to the OEB.

Please note that certain matters raised in your correspondence (for example, as they relate to the environmental approval and review proceedings) are beyond the scope of the OEB's jurisdiction, and they will not be addressed in this letter.

Leave to Construct (OEB File No. EB-2013-0339) and the Vary Orders

On March 19, 2015, the OEB granted White Pines leave to construct 28 km of 69 kV underground electricity transmission line and associated facilities to connect the

company's renewable generation project in Prince Edward County to the provincial transmission grid (OEB File No. EB-2013-0339). Leave to construct was conditional on the existence of an executed Feed in Tariff (FIT) contract between White Pines and the Independent Electricity System Operator (IESO), the fulfillment of the requirements of the IESO's System Impact Assessment and Hydro One Networks Inc.'s Customer Impact Assessment and White Pines commencing construction within 12 months of the date of the OEB's decision (i.e. by March 19, 2016).

The construction commencement deadline has been extended at the request of White Pines, most recently in March of 2017, due to the outstanding appeal of White Pines' Renewable Energy Approval to the Environmental Review Tribunal. The March 31, 2017 Vary Order issued in OEB File No. EB-2016-0268 requires White Pines to commence construction of its transmission line and associated facilities in accordance with the leave to construct Order granted on March 19, 2015, by September 29, 2017.

The March 19, 2015 leave to construct approval granted to White Pines and the subsequent Vary Orders (including the most recent) apply only to the electricity transmission line and associated facilities intended to connect the company's wind farm to the provincial transmission grid. The FIT contract itself, and any environmental and/or other approvals related to the White Pines renewable generation facility (the wind farm) itself are not within the OEB's jurisdiction. As the OEB confirmed in its March 31, 2017 Vary Order, "The OEB will not be re-hearing the merits of the original leave to construct application. That decision was determined in the March 19, 2015 Decision of the OEB." The Vary Order only provided for an extension to the construction commencement deadline and did not change any other conditions.

There is no ongoing OEB proceeding related to this transmission project.

The County's Letter of August 14, 2017

In his letter of August 14, 2017 on behalf of the County, Mr. Fairbrother advised that White Pines has "reduced their line voltage so as to delete some planned infrastructure and change their point of connection to the power grid." He went on to write that "As stated in your July 31, 2017 letter to wpd, the OEB expects wpd to provide revised information on the status and validity of its current System Impact Assessment and FIT contract and on wpd's plans to proceed with construction of the transmission infrastructure that was the subject of this hearing." Mr. Fairbrother included a copy of White Pines' Notice of Intent to Commence Works, apparently under the Road Users Agreement (RUA) between White Pines and the County, and related White Pines correspondence which referred to updated design drawings that, according to White

Pines, were delivered to the County on June 30, 2017. The Appendices to that notice, including Appendix B [Distribution System] were not included in Mr. Fairbrother's correspondence.

With respect to Mr. Fairbrother's statement that "It is our opinion that an amendment or a new application for LTC is required for this change in the scope of work", the leave to construct application was made under subsection 92(1) of the *Ontario Energy Board Act, 1998* (the OEB Act) and related to a transmission line and related transmission assets. That section of the OEB Act speaks to the OEB's leave being required for the construction of an electricity transmission line or an electricity distribution line. It is possible that a material change to the transmission line and related assets, as they were approved by the OEB in EB-2013-0339, may require the OEB's leave. However, notwithstanding the wording of section 92, if White Pines is no longer proceeding with a transmission line, but is instead constructing a distribution line, the matter is removed from the OEB's jurisdiction and leave to construct is no longer required, by operation of Ontario Regulation 161/99. Section 6.2 of that regulation provides, in part, that subsection 92(1) does not apply "to a person that constructs, expands or reinforces an electricity distribution line", and exempts from section 92(1) "a person that makes an interconnection linking a distribution system with an adjacent transmission system."

Accordingly, if White Pines has determined that it no longer intends to construct a transmission line and related transmission assets but instead will be constructing a distribution line and related distribution assets, the OEB would not expect to see an application for leave to construct the distribution line and assets. Connection of a renewable energy project at distribution voltage would follow the connection procedures of the connecting host transmitter or distributor at the interconnection point.

We also note that the reference to the OEB's correspondence of July 31, 2017 in Mr. Fairbrother's letter is incorrect. To be clear, the OEB's letter of July 31st stated:

Please be advised that, should White Pines make a further request to extend the deadline(s), the OEB will likely require information from White Pines on the status and validity of its current System Impact Assessment, Customer Impact Assessment and FIT contract; and on White Pines' plans to proceed with the construction of the transmission infrastructure that is the subject of this proceeding.

There has been no further request to extend the September 29, 2017 deadline.

Commencement of Construction in advance of all approvals

In its Decision and Order on the original White Pines application, the OEB stated: “White Pines is responsible for obtaining all necessary approvals, permits, licences, certificates and easement rights required to construct, operate and maintain the Transmission Project.” There is no condition in the Decision and Order that requires all approvals to have been obtained before any construction begins.

The OEB’s comment regarding other approvals serves to remind the applicant that the OEB’s Decision and Order granting leave to construct does not relieve the applicant of any other legal obligations that may exist in respect of the construction of the transmission facilities. To the extent that other approvals are required for construction of a specific part of the transmission facilities, those approvals will be required prior to commencement of construction on that part of the overall transmission project.

Licensing

Mr. Peel asked whether a distributor licence would be required if White Pines were to change its plans and construct a 16 km distribution line at 44 kV. While section 57 of the OEB Act requires owners or operators of electricity distribution systems and transmission systems to obtain a licence, exemptions from these requirements may be found in Ontario Regulation 161/99. In its original application, White Pines referred to section 4.02(1)(d) of that regulation as the basis for its exemption from transmitter licensing. Section 4.02 provides, in part, that certain requirements of the OEB Act, including the licensing requirement, do not apply to a transmitter that transmits electricity for a price, if any, no greater than that required to recover all reasonable costs (White Pines advised that it will not charge a price for the transmission of any electricity generated by the wind project) if the transmitter is a generator and transmits electricity only for the purpose of conveying it into the IESO-controlled grid.

A similar exemption from the distributor licensing requirement may be found at section 4.0.1(1)(d) of Regulation 161/99. The licensing requirement (among others) does not apply to a distributor that distributes electricity for a price no greater than that required to recover all reasonable costs, with respect to a distribution system owned or operated by a distributor, if the distributor is a generator and distributes electricity solely for the purpose of conveying it into the IESO-controlled grid. There is no indication that White Pines intends to charge any price for the distribution of electricity distributed by the proposed project. White Pines would therefore not be expected to apply for a distributor licence. Provided that developers of renewable generation projects are distributing or transmitting electricity only for the purposes described in the exemptions, they are

exempt from distributor or transmitter licence requirements.

Conclusion

Although there is no active OEB proceeding related to this project, all correspondence is posted on the OEB's web site within the directory for the most recent Vary Order (OEB File No. EB-2016-0268), and can be found at:

http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/search/rec&sm_udf10=eb-2016-0268&sortd1=rs_dateregistered&rows=200

Please note this response is not binding on the OEB. A binding decision from the OEB may only be obtained through a decision made by an OEB Panel or delegated authority. These comments are not intended as legal advice or a legal opinion, and we recommend that you consult with your own counsel in this matter.

Any questions relating to this letter should be directed to Michael Lesychyn, Case Manager at Michael.Lesychyn@oeb.ca or to James Sidlofsky, OEB Counsel at James.Sidlofsky@oeb.ca.

Sincerely,

Original signed by

Kirsten Walli
Board Secretary

cc. Intervenor in EB-2013-0339
Jaclyn D'Angelo, wpd White Pines Wind Incorporated
Jameel A. Baasit, wpd White Pines Wind Incorporated
Premier Kathleen Wynne
MPP Chris Ballard, MOECC
Mohsen Keyvani, Director, MOECC
MPP Eleanor McMahon, MTCS
Peter Armstrong, Director, MTCS
Michael Killeavy, Independent Electricity System Operator
MPP Todd Smith
Mayor Robert Quaiff
Councillor Steve Ferguson
Gord Gibbins and Orville Walsh, Alliance to Protect Prince Edward County
John Hirsch