



EB-2013-0339

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c.15, Schedule B (the Act);

AND IN THE MATTER OF an application by wpd White
Pines Wind Incorporated for an order or orders pursuant
to section 92 of the Act granting leave to construct
transmission facilities in Prince Edward County.

BEFORE:

Ken Quesnelle
Presiding Member and Vice Chair

Ellen Fry
Member

Peter Noonan
Member

DECISION AND ORDER

March 19, 2015

INTRODUCTION

This is an application made under section 92 and 97 of the Act for leave to construct certain electrical transmission facilities to connect a wind energy generation project to the provincial power grid and for approval of the associated forms of agreement offered to landowners.

For the reasons given below, the Ontario Energy Board (OEB) approves the application subject to certain conditions.

wpd White Pines Wind Incorporated (White Pines) filed an application with the OEB dated September 18, 2013 for leave to construct approximately 28 km of 69 kV underground electricity transmission line and associated facilities (the Transmission Project). The line would connect the company's White Pines wind generation project in Prince Edward County to the provincial power grid.

White Pines has stated that it has secured a FIT contract¹ for its White Pines project from the Independent Electricity System Operator (the IESO) (formerly the OPA).

The OEB has granted intervenor status to:

- Alliance to Protect Prince Edward County (APPEC);
- Al S. Warunikiw;
- County of Prince Edward (the County); and
- Gordon Gibbons.

All four intervenors filed interrogatories. APPEC, Al S. Warunikiw and the County filed evidence and submissions. OEB staff also filed interrogatories and submissions.

SCOPE OF THIS PROCEEDING

The OEB's power to grant an applicant leave to construct transmission facilities arises from subsection 92(1) of the Act which states:

¹ Power purchase agreement under the IESO's Feed-in Tariff Program. The objective of the FIT Program is to facilitate the increased development of renewable generating facilities of varying technologies and configurations.

92. (1) *No person shall construct, expand or reinforce an electricity transmission line... without first obtaining from the Board an order granting leave to construct, expand or reinforce such line....*

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 ... 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.*

In addition, 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.*

INTERESTS OF CONSUMERS WITH RESPECT TO RELIABILITY AND QUALITY OF ELECTRICITY SERVICE

System Impact Assessment

The System Impact Assessment (SIA), prepared by the IESO assesses whether the proposed connection to the electricity grid will have an adverse impact on the reliability of the electricity grid operation.

White Pines initially filed a SIA Report dated October 26, 2011. That report was based on the overhead transmission line originally proposed by White Pines. However, in its subsequent application to the OEB, White Pines sought leave to make the following changes to its project (collectively referred to as the Project Changes), which required White Pines to obtain a revised SIA Report from the IESO:

1. Install an underground transmission line rather than an overhead transmission line;
2. Modify impedances for two step-up transformers;
3. Modify the collector system design to use underground cables;
4. Install three collector feeders instead of two; and
5. Install a 10 MVAR 115 kV inductor at LV side of 230/69 kV transformer.

APPEC submitted that White Pines failed to supply information that was relevant to the hearing. It argued that the application lacked information regarding issues of reliability and quality of electricity as well as public safety concerning high voltage transmission lines that are buried. APPEC asked the OEB to postpone questions relating to reliability until the amended SIA Report was filed by White Pines.

On October 23, 2014, White Pines filed a SIA Addendum and a Notification of Addendum of Conditional Approval to Connection Proposal dated July 21, 2014. The SIA Report, the Addendum and the Notification are collectively referred to as the "SIA Documents". The SIA Documents concluded that the proposed connection of the Transmission Project is expected to have no material adverse impact on the reliability of the integrated power system, subject to White Pines meeting the requirements specified in the SIA Documents.

Customer Impact Assessment

The Customer Impact Assessment (CIA) prepared by Hydro One assesses the impact of the proposed connection on the Hydro One transmission customers in the area.

White Pines filed a CIA Report dated October 21, 2011. This CIA was based on the 69kV overhead transmission line originally proposed by White Pines. The CIA concluded that no adverse impacts to transmission customers were expected. White Pines filed a letter from Hydro One dated December 1, 2014 which stated that the results of the CIA are not significantly impacted by the Project Changes.

As indicated above, APPEC submitted that one of the changes to the project listed in the SIA Addendum, namely, "Install a 10 MVar @ 115 kV inductor at LV side of 230/69 kV transformer" is not included in the changes listed in Hydro One's letter and therefore that the CIA is not valid. APPEC requested that White Pines notify the IESO of all modifications to the wind generation facility since 2011. APPEC submitted that the IESO should also be informed of a facility on Amherst Island given the location of the Lennox generating station in relation to the two wind generation wind facilities.

White Pines obtained a clarification letter from Hydro One dated February 3, 2015, which confirmed that Hydro One had knowledge of the inductor equipment installation and that in its view those changes do not significantly impact the project. Hydro One advised that it had taken this project change into account, and no CIA Addendum would be issued.

OEB Findings

The SIA Documents conclude that the proposed connection is expected to have no material adverse impacts on the reliability of the integrated power system, subject to the requirements of the SIA Documents being met. The Board is satisfied that all Project Changes were communicated to the IESO.

The CIA Report and the subsequent correspondence from Hydro One provided evidence that the proposed connection of the Transmission Facilities will not adversely impact reliability for existing Hydro One customers in the area, subject to the requirements specified in the CIA.

The Board accepts that the SIA and CIA are based on the facilities that are either known to exist or are pending and of consequential proximity at the time of the assessments. APPEC asserts that the IESO should be made aware of Windlectric's proposed facilities on Amherst Island. The Board does not consider the lack of consideration of this potential future facility to be a flaw in the assessments. Due to the sequential nature of additions to the electrical system, the Board fully expects that any SIA and CIA conducted for additional facilities will consider other existing facilities and that those that have already been assessed will be taken into account.

Based on the conclusions of the SIA Documents and the CIA Report, and the lack of any other evidence that in the OEB's view demonstrated a potential impact on the

reliability or quality of service to existing consumers, the OEB finds that the proposed connection will not adversely impact the interests of consumers with respect to the quality and reliability of service they receive if the requirements of the SIA Documents and CIA Report are met.

INTERESTS OF CONSUMERS WITH RESPECT TO PRICES

White Pines submitted that it will pay for the development and construction of the Transmission Project and thus it will not have any adverse impact on electricity transmission rates in Ontario. No party challenged that conclusion.

The County requested White Pines to provide a full cost impacts analysis of the bridges and municipal roads along the intended transmission and collector lines route, to assess the interests of its ratepayers with respect to prices. White Pines responded that the information requested was outside of the scope of the Board's jurisdiction under section 96 of the Act.

OEB Finding

The OEB finds that the construction and connection of the proposed Transmission Project will not have any adverse impact on electricity prices in Ontario, given the fact that White Pines will pay for the Transmission Project.

The OEB agrees with White Pines submission that the type of costs to ratepayers referred to by the County is not within the OEB's mandate.

INTERESTS OF CONSUMERS WITH RESPECT TO THE PROMOTION OF THE USE OF RENEWABLE ENERGY SOURCES

White Pines submitted that the Transmission Project is in the public interest because it will enable White Pines to supply renewable energy to Ontario's electricity grid consistent with its obligations under its FIT contract, the objective of the FIT Program, and the renewable energy policies of the Government of Ontario.

APPEC submitted that the only way to ensure that the Transmission Project is promoted in a manner that is consistent with the policies of the Government of Ontario is to

acknowledge the relevance of the issues concerning the Transmission Project it has raised.

APPEC raised issues concerning consultation, route, and protection of heritage properties and argued that these matters were not properly addressed by White Pines. It also claimed that the application was flawed because it lacked information related to reliability and quality of electricity service and public safety.

In addition, APPEC requested that White Pines provide information regarding the route of the transmission line in relation to the Milford Black Creek Valley Provincially Significant ANSI².

White Pines responded that these matters and the information requested by APPEC were outside of the scope of the OEB's jurisdiction under section 96 of the Act.

OEB Findings

The IESO's FIT Program is a program developed for the Government of Ontario, with the objective, in conjunction with the *Green Energy and Green Economy Act, 2009* and Ontario's Long Term Energy Plan, 2010, to facilitate the increased development of renewable generating facilities of varying sizes, technologies and configurations via a standardized, open and fair process³. Given the existence of a FIT contract between the IESO and White Pines, the OEB finds that granting leave to construct the Transmission Project is consistent with the policies of the Government of Ontario favouring the promotion of the use of renewable energy sources.

With the exception of reliability and quality of electricity service the matters raised by APPEC are beyond the scope of the legislation pertaining to this application. As stated elsewhere in the decision APPEC's concerns with respect to reliability and quality of electricity service are not substantiated.

² Area of Natural and Scientific Interest

³ <http://fit.powerauthority.on.ca/fit-program>

FORM OF AGREEMENT OFFERED TO LANDOWNERS

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

The land area required for the Transmission Project consists of:

- a) The private lands required for the collection substation;
- b) The private lands and municipal road rights-of-way required for the transmission line; and
- c) The private lands required for the interconnection substation.

White Pines submitted the following forms of land use agreement for the OEB's approval:

- License and Option to Lease Agreement for Wind Project Site;
- License and Option to Lease Agreement for Interconnection Substation;
- Form of Lease Agreement for Wind Project Site; and
- Form of Lease Agreement for Interconnection Substation.

Private Land Requirements for the Collection Substation and the Interconnection Substation

White Pines stated that it has received signed License and Option to Lease Agreements from each of the private landowners whose land will be required for the collection substation and the interconnection substation and has therefore secured the necessary land rights for all construction activities.

Private Land and Municipal Rights-of Way Requirements for the Transmission Line

The transmission line will lie partly within municipal rights-of-way and partly on privately owned land.

With respect to the sections of the transmission line to be located on private land, White Pines has submitted the form of agreement offered to the landowners. White Pines states that it has entered into agreements with all affected private landowners.

White Pines submitted that the bulk of the proposed 28 km transmission line will be built underground within the municipal rights of way of the County with the exception of two existing bridge crossings. According to the evidence, no agreement with respect to the placement of the transmission line on municipal road allowances has been reached to date.

The County submitted that any approval granted by the OEB should be conditioned on White Pines signing a road use agreement with the County.

APPEC submitted that the OEB should condition any approval to require White Pines to comply with any County conditions of approval.

OEB staff submitted that the need for a road use agreement was considered in the Niagara Wind case³ in which the OEB stated “In the case of municipal road allowances, an Applicant is not required to submit a road use or other agreement to the OEB under section 97 where it proposes to rely subsequently upon the statutory rights conferred by section 41 of the Electricity Act.”⁴

White Pines submitted that, in the event of an impasse, the rights and remedies provided to a transmitter under in section 41 of the *Electricity Act, 1998* and section 101 of the Act ensure that White Pines will have access to the municipal road allowance.

OEB Findings

The OEB has reviewed the proposed agreements and notes that all of the affected private landowners have executed agreements with White Pines. None of those landowners have indicated to the OEB that they were unwilling to sign these agreements because they had issues with the form of agreement offered to them by White Pines and submitted to the OEB for approval under section 97 of the Act.

The OEB approves the form of agreements offered to the landowners, noting as it has done in previous cases that its approval in this context does not necessarily imply that the OEB would, or would not, approve these forms of agreement in any future proceedings. Some forms of agreement filed with the application encompassed lands

⁴ EB-2013-0203, *Decision on Threshold Questions and Procedural Order No. 2*, dated February 4, 2014, pages 12-13.

not required for the transmission facilities. The OEB notes that its approval of the forms of agreements relates only to the lands required for the transmission facilities.

Regarding the use of the municipal rights of way, the OEB concurs with OEB staff that White Pines does not need to submit a road use agreement to the municipality for approval because it can rely on the powers conferred under section 41 of the Electricity Act.

Section 94 of the Act

APPEC submitted that White Pines did not comply with section 94 of the Act. APPEC submitted that the application contains multiple disjointed maps of the route and the project location description is not clear.

In its reply submission, White Pines submitted that to comply with the requirements of section 94, an applicant need only provide a general location map of the proposed transmission line to identify the municipalities, highways, railways, utility lines and navigable waterways that the line will traverse.

OEB Findings

Section 94 of the Act provides as follows:

Route map

94. An applicant for an order granting leave under this Part shall file with the application a map showing the general location of the proposed work and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed work is to pass. 1998, c. 15, Sched. B, s. 94.

The OEB finds that White Pines has complied with the requirements of section 94. The OEB agrees with White Pines that the plans supplied are sufficient for the purposes of identifying the route of the Transmission Project for the purposes of this decision.

OEB Filing Requirements

APPEC also submitted that White Pines had not followed all of the OEB Filing Requirements in its application. In particular, it argued that White Pines must provide the route of the line, the lot and concession numbers of the land over, under, on or adjacent to which, the line runs, and the plan of each section of the transmission line in relation to the description and indicating clearances to the land profile or, where buried, in relation to the surface.

Mr. Warunikiw submitted that important engineering details are missing from the application, such as how to handle the conduits crossing the small bridges and that “stamped real engineering studies and final construction plans” are required. White Pines submitted that this information is outside the OEB’s jurisdiction under section 96.

OEB Findings

The OEB has determined that the application and record of this hearing contains all of the information necessary to make its decision.

OEB Mandate

APPEC suggested that an environmentally sensitive area (Milford Black Creek Valley Area of Natural and Scientific Interest) affected by the proposed route of the transmission facilities should be a factor in the OEB’s consideration of the application.

APPEC also submitted that consultation in the Ministry of the Environment Renewable Energy Approval process has been inadequate and unproductive APPEC further submitted that property owners along the Transmission Project route continue to be concerned about property damage or loss from vibrations during construction and damage to vulnerable heritage structures.

Mr. Warunikiw submitted that foundations on his property can easily be damaged by construction vibration, blasting and or drilling. Mr. Warunikiw also submitted that he will suffer loss of income during construction and property devaluation.

OEB Findings

These issues are outside of the OEB's jurisdiction under section 96 of the Act.

Type of Hearing and Procedural Timelines

Mr. Warunkiw claims that he has been inappropriately denied the opportunity for an oral hearing in front of the OEB. Mr. Warunkiw also submitted that the short timelines has made it difficult to comply with the orders of the OEB.

OEB Findings

In its Notice of Application and Written Hearing, the OEB indicated that it intended to proceed by way of a written hearing unless any party satisfied the OEB that there was a good reason for not proceeding by way of a written hearing. The OEB determined that the issues did not require an oral hearing and has proceeded by way of a written hearing.

With respect to Mr. Warunkiw's comment about short timelines, the OEB notes that this application has been active before the OEB for more than a year and that extensions were given where warranted.

OEB DECISION

The OEB approves the forms of agreement submitted pursuant to section 97 of the Act and finds that it is in the public interest to grant White Pines leave to construct the Transmission Project pursuant to section 92 of the Act. The OEB's decision is subject to conditions, which are fully set out in the Order below.

The OEB notes that White Pines is responsible for obtaining all necessary approvals, permits, licences, certificates and easement rights required to construct, operate and maintain the Transmission Project.

THE OEB ORDERS THAT:

1. Pursuant to section 92 of the Act, the OEB grants White Pines leave to construct the Transmission Project in accordance with the OEB's decision in this proceeding. The granting of this leave to construct is conditional on:
 - I. The existence of an executed FIT contract between White Pines and the IESO;
 - II. The fulfillment of the requirements of the SIA Documents;
 - III. The fulfillment of the requirements of the CIA; and
 - IV. White Pines commencing construction within 12 months of the date of the OEB's decision.
2. Pursuant to section 97 of the Act, the OEB approves the forms of agreement offered to private landowners filed by White Pines in this proceeding.
3. APPEC, Al S. Warunikiw and Gordon Gibbons shall submit cost claims no later than 7 days from the date of this decision.
4. White Pines shall file with the OEB and forward to APPEC, Al S. Warunikiw and Gordon Gibbons any objections to the claimed costs within 14 days from the date of the issuance of this decision.
5. APPEC, Al S. Warunikiw and Gordon Gibbons shall file with the OEB and forward to White Pines any response to any objection for cost claims within 21 days from the date of this decision.
6. White Pines shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

ISSUED at Toronto, March 19, 2015**Ontario Energy Board***Original Signed By*Kirsten Walli
Board Secretary