



EB-2011-0217

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

AND IN THE MATTER OF an application by South Kent Wind LP for an Order or Orders pursuant to section 92 of the *Ontario Energy Board Act, 1998* (as amended) granting leave to construct transmission facilities in the Municipality of Chatham-Kent.

BEFORE: Paula Conboy
Presiding Member

Paul Sommerville
Member

DECISION AND ORDER

The Proceeding

South Kent Wind LP ("SKW") has filed an application with the Ontario Energy Board (the "Board") dated June 14, 2011 under section 92 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B, for an order of the Board granting leave to construct the following transmission facilities (the "Project") in the Municipality of Chatham-Kent:

- (i) Two 34.5 kV/230 kV step-up substations;
- (ii) An approximately 27 km, 230 kV transmission line (the "Corridor Line") that will run between the two step-up substations;

- (iii) An approximately 5.7 km, 230 kV transmission line that will run from a tie-point on the Corridor Line to the Chatham Switching Station owned by Hydro One Networks Inc.; and
- (iv) A fenced-in metering station with two meters to be located adjacent to the Chatham Switching Station.

The Board has assigned File No. EB-2011-0217 to the application.

SKW is a limited partnership and its two limited partners are Pattern South Kent LP Holdings LP (“Pattern”) and Samsung Renewable Energy Inc. (“Samsung”), each of which holds a 49.99% interest in SKW. South Kent Wind GP Inc., which is indirectly wholly owned by Samsung and affiliates of Pattern, is the general partner of SKW and holds a 0.02% interest in SKW.

The Board issued a Notice of Application and Hearing (“Notice”) on June 28, 2011. SKW served and published the Notice as directed by the Board.

Following the publication of the Board’s Notice, the Board received requests for intervenor status from the Kent Federation of Agriculture (“KFA”), the Independent Electricity System Operator (“IESO”), and a joint intervention from landowners, William and Mary Ann Machacek and William Alan and Anne English (“Machacek-English”).

The Board granted intervenor status to all parties that requested such status. The Board also determined that the KFA and Machacek-English are eligible to apply for an award of costs under the Board’s *Practice Directions on Cost Awards*. The Board stressed that cost eligibility shall be restricted to matters directly within the scope of this proceeding.

On August 3, 2011 the Board issued Procedural Order No. 1, which amongst other things, set out the list of approved intervenors and the schedule for the written hearing. Only Board staff and Machacek-English submitted interrogatories. SKW provided complete responses to all interrogatories on August 22, 2011. The Board received submissions from Machacek-English on September 6, 2011 and reply submissions from SKW on September 16, 2011.

Evidence and Board Findings

In the context of this application, the Board has considered the following categories of evidence in relation to its mandate:

- Project need
- System Impact Assessment and Customer Impact Assessment
- Land issues and form of Easement Agreement
- Environmental Assessment
- Project Costs and Impact on ratepayers

The Board considered the full record of the proceeding but has summarized the record only to the extent necessary to provide context to its findings.

Project Need

SKW stated that in January 2010, the Province of Ontario entered into a Green Energy Investment Agreement with Samsung C&T Corporation and Korea Electric Power Corporation (together the "Korean Consortium"). Under the terms of that agreement, the Korean Consortium agreed to develop 2,500 MW of wind and solar renewable generation projects in Ontario in five phases.

As part of the first phase of that commitment Samsung and Pattern are developing a 270 MW wind farm located within the Municipality of Chatham-Kent (the "Wind Farm"). The transmission facilities proposed in this application are needed to connect the Wind Farm to the IESO controlled grid.

SKW submitted that when determining if the proposed facilities are in the public interest, section 96(2) of the Act provides that the Board shall only consider the interests of consumers with respect to price, reliability and quality of electricity service, and where applicable and in a manner consistent with the Government of Ontario's policy to promote the use of renewable energy sources.

SKW stated that the proposed transmission facilities will enable the addition of 270 MW of clean, renewable energy to the electricity grid and in keeping with the provisions of section 96(2) SKW submitted that the Project is consistent with the government's policy objective to promote the use of renewable energy sources, and is therefore in the public

interest. SKW also filed a letter dated April 1, 2010, from the Minister of Energy and Infrastructure, which confirmed the agreement between the Korean Consortium and the Government of Ontario. The letter also directed the Ontario Power Authority “to hold in reserve 260 MW transmission capacity in Essex County and the Municipality of Chatham-Kent for the Korean Consortium or its Project Companies”.¹ SKW further submitted that the cost of the Project will be paid for by SKW and will not impact electricity transmission rates in Ontario.

The Board has reviewed the evidence and is satisfied that the need for the Project has been established to the extent necessary.

System Impact Assessment and Customer Impact Assessment

The Board’s filing requirements for transmission and distribution applications² specify that an Applicant is required to file a System Impact Assessment (“SIA”) performed by the IESO and a Customer Impact Assessment (“CIA”) performed by the relevant licensed transmitter, in this case Hydro One Networks Inc. (“Hydro One”).

A SIA report dated May 5, 2011 was included in the pre-filed evidence and SKW confirmed that it had received a *Notification of Conditional Approval* from the IESO as part of the SIA. The SIA concluded that the proposed transmission facilities will not have a material adverse impact on the reliability of the IESO controlled grid. As noted in the SIA, final approval will be granted by the IESO during the IESO’s Market Entry process and “the connection applicant will be required to demonstrate to the IESO that all requirements identified in this SIA report have been satisfied”.³

SKW also submitted a CIA dated May 06, 2011. The CIA concluded that there was no material change in voltage performance or on short circuit levels for the majority of Chatham-Essex area customers from this project⁴.

SKW confirmed its intention to comply with the recommendations in the SIA and CIA.

¹ Letter from Minister of Energy and Infrastructure, dated April 1, 2010, p3

² Filing Requirements for Transmission and Distribution Applications, November 14, 2006, Section 4.3.8 (System Impact Assessment), and Section 4.3.9 (Customer Impact Assessment)

³ SIA Report, Paragraph 17, p. 7

⁴ CIA Report, p.33

The Board accepts the evidence provided in the SIA and CIA that there will be no adverse impacts on the reliability of the integrated electricity grid. The Board will however require as part of the Conditions of Approval, that SKW satisfy the requirements of the SIA and the CIA as well as further requirements and conditions which the IESO and Hydro One may find to be necessary.

Land Issues and Form of Easement Agreement

Section 97 of the Act requires that the Board be satisfied that the Applicant has offered or will offer each landowner affected by the proposed route or location an agreement in a form approved by the Board. On July 27, 2011 SKW submitted Forms of Easement Agreement in relation to farm lands, municipal right-of-way and the corridor lands.

At Exhibit B/Tab 4, SKW provided a detailed description of the project route and the alternatives considered. SKW proposed to locate the 27 km Corridor Line within a 90-foot wide Canadian Southern Railway Company ("CSR") corridor. The Tie line is to be located along the properties of nine private landowners and on a municipal right-of-way.

With respect to agreements with the nine private landowners, SKW submitted that easements had been obtained from all but one landowner along the Tie-line. SKW does not anticipate any land-related issues and expects that the one remaining agreement will be executed by the end of September 2011.

With respect to the easement agreement in relation to the municipal right-of-way, SKW stated:

SKW and the Municipality of Chatham-Kent have agreed in concept to the granting of a registered easement with respect to the Municipal ROW – an easement is currently under negotiation with the Municipality of Chatham-Kent and is expected to be executed in the coming weeks following completion of boundary and topographical surveys of the subject lands.⁵

With respect to the status of the agreements in relation to the corridor, SKW submitted:

CKT [Chatham-Kent Transmission] has obtained a registered easement from CSR in respect of the western portion of the Corridor. This easement was

⁵ Board staff interrogatory No. 2 (d)

registered in favour of CKT on or about August 5, 2011. Further, SKW confirms that through an affiliate it has secured contractual rights with CKT with respect to, *inter alia*, the granting of an easement by CKT to SKW over the western and eastern portions of the Corridor. SKW confirms that the sub-easement and easement to be registered in favour of SKW in respect of the western and eastern portions, respectively, are currently under negotiation between CKT and SKW. SKW has no reason to believe that the execution of the necessary agreements will be delayed or not executed at all.⁶

Machacek-English raised three issues in relation to land matters. First, Machacek-English expressed concern over the state of the corridor and submitted that the neglect of these lands was negatively affecting the agricultural productivity of surrounding lands. Machacek-English submitted that matters related to the upkeep of the corridor should be addressed prior to the sale of the corridor. Second, Machacek-English submitted that the corridor lands should be used for agriculture and for the production of biodiesel or ethanol. Third, Machacek-English argued that the proposed hydro corridor would negatively impact the property values of adjacent lands.

SKW submitted that the issues raised by Machacek-English are “environmental” and were therefore beyond the scope of a section 92 leave to construct application. SKW further submitted that the matters related to the upkeep of the corridor lands was an issue for the owner of the corridor and not SKW, the lessee. With respect to the appropriate use for the corridor lands, SKW submitted that the Board did not have jurisdiction to rule on such matters. Lastly, with respect to the issue of negative impact on property values, SKW submitted that the claim was unsubstantiated and referred to the Board’s Decision in EB-2005-0230 where the Board had stated: “It is clear, when section 96 is read, that the value of land or the potential devaluation of land of an abutting property owner does not fall within the scope of the Board’s jurisdiction”.⁷

As noted in the Board’s Notice and elsewhere in this Decision, the Board’s jurisdiction in a section 92 leave to construct application is strictly limited to the consideration of price, reliability and quality of electricity service and consistency with the Government of Ontario’s policy to promote the use of renewable energy sources. In the Board’s view the issues related to the state of the corridor and its impact on agricultural production of surrounding lands, the appropriate use for affected lands and the impact on land values,

⁶ SKW Final Reply Submission, p. 5

⁷ EB-2005-0230, Transcript Vol. 1, p.124

do not directly relate to the price, reliability or quality of electricity service or the promotion of the government policy and accordingly, are beyond the scope of the Board's jurisdiction, as prescribed in section 96(2) of the Act. Therefore, the Board does not have the authority to consider the issues raised by Machacek-English.

Further, the Board notes that the majority of the Project is located on a pre-existing railway corridor that has been used for industrial purposes for over 100 years. The Board also notes that SKW has successfully obtained a number of the easement agreements and is in the process of executing the remaining agreements. The Board is satisfied that the proposed route is the most efficient and least invasive of the alternatives available.

These factors, in addition to the finding made in EB-2005-0230, which is cited above, and with which we agree, leads us to conclude that, given the limits on the Board's jurisdiction, and the evidence in this case, the proposed route for the transmission facilities is acceptable and reasonable. The Board notes that there were no criticisms of the form of Easement Agreement proposed by the Applicant, and that it has formed the basis of agreement with all but one of the individual landowners affected. The Board finds that the Form of Easement Agreement is acceptable.

Environmental Assessment

The Applicant's evidence states that environmental approvals for the transmission facilities are being obtained in accordance with the Renewable Energy Approval ("REA") process as set out in Ontario Regulation 359/09 under the *Environment Protection Act*. In response to Board staff interrogatory No. 4 SKW provided a detailed description of the status of the on-going REA process and noted that final approval is expected by February 28, 2012.

The Board does not have jurisdiction to determine issues related to the Environmental Assessment approval, but it is important to note that the order granting Leave to Construct will be conditioned on the implementation of the recommendations of the REA.

Project Costs and Impact on Ratepayers

The estimated cost of the transmission facilities and the interconnection to Hydro One's system is \$30 million. SKW stated that the proposed transmission facilities will be owned and constructed by SKW until they are commissioned, following which the facilities will be sold to Chatham Kent Transmission ("CKT"). The planned date for the transfer is January 2013.

SKW stated that the cost of the transmission facilities and the interconnection to Hydro One's Chatham Switching Station will be paid for by SKW and will have no impact on transmission rates in Ontario. In response to Board staff interrogatory No. 5 SKW stated:

"Costs will not be socialized and an approved Ontario Energy Board tariff sheet is not being sought. Costs will be recovered directly from Pattern in the form of contributed capital and operational cost recoveries under the terms of a 20-year commercial agreement to be mutually agreed upon between the two parties."⁸

SKW also filed a letter from CKT, dated August 22, 2011, that confirmed the proposed sale of assets and cost recovery mechanism. CKT stated:

"...it is CKT's intent (and that of SKW) that the charges be recovered directly from SKW and not form part of the provincial transmission cost pool. Rather, it is CKT's intent (and that of SKW) that the subject transmission service charges will be set out in a 20 year transmission services agreement between CKT and the SKW...."

Accordingly, the Board is satisfied that the Project will not have an adverse impact on transmission rates in Ontario.

Conclusion

Having considered all of the evidence related to the application, the Board finds the proposed project to be in the public interest in accordance with the criteria established in section 96(2) of the Act.

⁸ Chatham-Kent Transmission's Licence Application - EB-2010-0351

The Board has previously determined that Machacek-English and the KFA are eligible for an award of costs. The schedule for the cost claim process is set out below.

THE BOARD ORDERS THAT:

1. Pursuant to section 92 of the Act, SKW is granted leave to construct the proposed transmission facilities, in the Municipality of Chatham-Kent, subject to the Conditions of Approval attached as Appendix A to this Order.
2. The Board had previously determined that Machacek-English and the KFA are eligible to apply for an award of costs. Claims in this regard should conform to the Board's *Practice Direction on Cost Awards*, and shall be filed with the Board and one copy served on SKW by **October 21, 2011**. SKW should review the cost claims and any objections must be filed with the Board and one copy must be served on the claimant by **October 28, 2011**. Parties will have until **November 4, 2011** to respond to any objections. All submissions must be filed with the Board and one copy is to be served on SKW. SKW shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote the file number EB-2011-0217, be made through the Board's web portal at www.errr.ontarioenergyboard.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guidelines found at www.ontarioenergyboard.ca. If the web portal is not available you may e-mail your document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

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
Tel: 1-877-632-2727 (toll free)
Fax: 416-440-7656

ISSUED at Toronto, October 11, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A
TO DECISION AND ORDER
CONDITIONS OF APPROVAL
EB-2011-0217
DATED: OCTOBER 11, 2011

**Conditions of Approval for the
South Kent Wind LP ("SKW") Transmission Line and Associated
Facilities (the "Project")
EB-2011-0217**

1 General Requirements

1.1 SKW shall construct the Project and restore the Project land in accordance with its Leave to Construct application, evidence and undertakings, except as modified by this Order and these Conditions of Approval.

1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate October 31, 2012, unless construction of the Project has commenced prior to that date.

1.3 SKW shall implement all the recommendations of the Environmental Assessment Approval and any amendment thereto, and other conditions which may be imposed by environmental authorities.

1.4 SKW shall satisfy the Independent Electricity System Operator ("IESO") requirements and recommendations as reflected in the System Impact Assessment report dated May 05, 2011, and such further and other conditions which may be imposed by the IESO.

1.5 SKW shall satisfy the Hydro One Networks Inc. ("Hydro One") requirements as reflected in the Customer Impact Assessment report dated May 06, 2011, and such further and other conditions which Hydro One finds to be necessary.

1.6 SKW shall advise the Board's designated representative of any proposed material change in the Project, including but not limited to material changes in the proposed route, construction techniques, construction schedule, restoration procedures, or any other material impacts of construction. SKW shall not make a material change without prior approval of the Board or its designated representative. In the event of an emergency the Board shall be informed immediately after the fact.

1.7 SKW shall obtain all necessary approvals, permits, licences, certificates and easement rights required to construct, operate and maintain the Project, and shall provide copies of all such written approvals, permits, licences and certificates upon the Board's request.

2 Project and Communications Requirements

2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Electricity Facilities and Infrastructure Applications.

2.2 SKW shall designate a person as Project engineer and shall provide the name of the individual to the Board's designated representative. The Project engineer will be responsible for the fulfillment of the Conditions of Approval on the construction site. SKW shall provide a copy of the Order and Conditions of Approval to the Project engineer, within ten (10) days of the Board's Order being issued.

2.3 SKW shall develop, as soon as possible and prior to the start of construction, a detailed construction plan. The detailed construction plan shall cover all material construction activities. SKW shall submit two (2) copies of the construction plan to the Board's designated representative at least ten (10) days prior to the commencement of construction. SKW shall give the Board's designated representative ten (10) days written notice in advance of the commencement of construction.

2.4 SKW shall furnish the Board's designated representative with all reasonable assistance needed to ascertain whether the work is being or has been performed in accordance with the Board's Order.

2.5 SKW shall, in conjunction with Hydro One Networks Inc., Ontario Power Generation and the IESO, develop an outage plan which shall detail how proposed outages will be managed. SKW shall provide two (2) copies of the outage plan to the Board's designated representative at least ten (10) days prior to the first outage. SKW shall give the Board's designated representative ten (10) days written notice in advance of the commencement of outages.

2.6 SKW shall furnish the Board's designated representative with two (2) copies of written confirmation of the completion of Project construction. This written confirmation shall be provided within one month of the completion of construction.

3 Monitoring and Reporting Requirements

3.1 Both during and for a period of twelve (12) months after the completion of construction of the Project, SKW shall monitor the impacts of construction, and shall file two (2) copies of a monitoring report with the Board within fifteen (15) months of the completion of construction of the Project. SKW shall attach to the monitoring report a log of all comments and complaints related to construction of the Project that have been received. The log shall record the person making the comment or complaint, the time the comment or complaint was received, the substance of each comment or complaint, the actions taken in response to each if any, and the reasons underlying such actions.

3.2 The monitoring report shall confirm SKW's adherence to Condition 1.1 and shall include a description of the impacts noted during construction of the Project and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction of the Project. This report shall describe any outstanding concerns identified during construction of the Project and the condition of the rehabilitated Project land and the effectiveness of the mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.

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