



McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

George Vegh
Direct Line: 416 601-7709
Direct Fax: 416 868-0673
Email: gvegh@mccarthy.ca

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VIA EMAIL AND COURIER

Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto, ON M4P 1E4

**Attention: Ms Kirsten Walli
Board Secretary**

Dear Ms. Walli:

**Re: NextEra Energy Canadian Operating Services, Inc.
Conestogo Wind L.P. ("Conestogo")
Application for Feed-in Tariff Program Licences
Reply Submissions
Board File Nos. EB-2012-0311 and EB-2012-0312**

We are counsel for the Applicants in the above noted matter and hereby provide the Applicants' Reply submissions.

Procedural Order #2 directed that Reply submissions are due on October 24, 2012. These submissions are provided early so assist the Board with an expeditious resolution of this matter. This is necessary because the commercial in-service date for the generation facility is December 7, 2012. To achieve this in-service date, the generation licence must be provided to other agencies (Hydro One and the Independent Electricity System Operator) well before that time.

Procedural Order # 2 stated the following with respect to the scope of this proceeding:

However, the Board would like to note that the main criteria in relation to the licensing of electricity generators under the FIT Program are whether the applicant received a Notice to Proceed from the OPA and the status of the connection process with the local distributor. In addition, the Board notes that in the exercise of its licensing function the Board's practice is to review a licence application based on the applicant's ability to own and/or operate a generation facility and to participate reliably in Ontario's energy market.

The Board further notes that other agencies have the mandate to oversee areas such as the environmental and regulatory approvals related to the actual generation facilities.

Conestogo received OPA Notice to Proceed on March 8, 2012. The Distribution Connection Agreement was executed with Hydro One, the local distribution company, on October 18, 2012.

PMI's submissions respecting Conestogo's ability to own and/or operate a generation facility and to participate reliably in Ontario's energy market, contain a number of argumentative, irrelevant and unsubstantiated allegations against Conestogo, NextEra and the wind energy sector generally. Without responding to every single allegation, NextEra states for the record that it vehemently disagrees with PMI's comments. With respect to the basic points that PMI makes with respect to Conestogo's financial viability, technical capability and ability to carry on business with integrity, Conestogo replies as follows.

Financial Viability and Technical Capability

PMI's submissions on these points relate to Conestogo's parent company, NextEra Energy Resources, LLC ("NextEra"). The Board has already had the opportunity to consider NextEra's financial and technical capability in granting a transmission licence to another NextEra subsidiary, Upper Canada Transmission Inc. It concluded on this point as follows:¹

"I find that the applicant has provided sufficient evidence of its financial viability and technical capabilities to qualify for a transmission licence. Upper Canada provided the 2010 financial statements and annual report for its parent company NextEra Energy, Inc. as Upper Canada is a newly created entity and no financial results are available for it at this time. With respect to technical capabilities, Upper Canada, being a newly created entity with no technical expertise of its own, intends to rely on the technical expertise of its affiliates who were described as entities with extensive experience with electricity transmission, distribution and generation development. The information provided meets the threshold qualification requirements for the licensing process."

In addition, the Board has granted Leave to Construct to transmission facilities to Summerhaven Wind LP, another NextEra subsidiary.² In doing so, the Board heard extensive evidence on technical, engineering and design issues before granting the authority. Clearly, the Board would not have granted this authority if it had any grounds to question the applicant's financial and technical capabilities.

Thus, when the Board has had the opportunity to consider real evidence on technical and financial capabilities, it has more than satisfied itself about NextEra's qualifications.

Integrity

With respect to NextEra's integrity, PMI makes a number of completely unsubstantiated statements, and then attempts to attack NextEra's REA process, even going so far as to allege

¹ Decision of the OEB granting UCT Transmission Licence, November 23, 2011 (EB-2011-0222), p. 3.

² Decision of the OEB granting Leave to Construct to Summerhaven Wind LP, November 11, 2011 (EB-2011-0027).

that the REA consultation “was a sham.” PMI has unsuccessfully tried to challenge the REA approval process before the Minister of Environment (under the Renewable Energy Approvals provisions of the *Environmental Protection Act*), before the Environmental Review Tribunal and before the Divisional Court.

In the latter proceeding, PMI was refused status to intervene on behalf of the public interest. The Divisional Court also held that PMI should be required to pay the legal costs incurred by the Director of the Ministry of the Environment and Conestogo in defending a Judicial Review application. In making this unusual order of costs against a Judicial Review applicant, the Divisional Court noted that PMI did not make a helpful contribution to the process. It described PMI’s participation as consisting of taking “issue with alleged defects in the process without producing evidence that any individual suffered prejudice because of those defects. The respondents were put to considerable expense to respond to the application.”³

PMI is clearly trying to have these issues relitigated before this Board. This is an entirely inappropriate use of the Board’s licencing authority.

PMI also challenges the terms of agreements entered into between Conestogo and land owners, presumably on the grounds of fairness. NextEra submits that the agreements are entirely appropriate and, in any event, irrelevant to the issue before the Board. Even if they were relevant, in the one case where the Board did have substantive evidence on NextEra’s consultation and land owner compensation agreements, the Board reviewed the evidence and did not express any concerns.⁴

The Application Forms

Finally, PMI argues that, in the REA application, Conestogo states that the generation project will include an “electrical substation.” It observes that this is inconsistent with the Applicant’s statement in the generation licence application that it will not “own and operate a transformer station or distribution station that is used to transform the voltage of electricity at a generation station described in subsection 7(a) on a transmission line or on the distribution system of a local Distribution Company.”

Conestogo acknowledges that the two applications are not entirely aligned on this technical point and that it should have checked the “yes” box on the licence application form instead of the “no” box. Nevertheless, this has no impact of the licencing issue. To clarify the record, Conestogo hereby amends its application to provide an affirmative answer to the question in the application and apologizes for any confusion.

³ *Preserve Mapleton Incorporated v. Director, Ministry of Environment*, Divisional Court Costs Endorsement, August 7, 2012.

⁴ Decision of the OEB granting Leave to Construct to Summerhaven Wind LP, November 11, 2011 (EB-2011-0027), see pp. 12-13.

Conclusion

In light of the foregoing, the Applicant therefore respectfully submits that it has met the requirements for a generator licence and asks that the Board issue one within the timeframe addressed above.

All of which is respectfully submitted.

signed in the original

George Vegh
Counsel for the Applicants

- c. Scott Goorland, NextEra Energy Resources, LLC
Nicole Geneau, NextEra Canada Energy ULC
Jeremy Ferrell, NextEra Energy Resources, LLC
Preserve Mapleton Inc., c/o Elise Krul, (via fax: 519-848-2227).