Ontario

ONTARIO ENERGY BOARD

DECISION AND ORDER

GREENFIELD SOUTH POWER CORPORATION

EB-2014-0299

April 2, 2015

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2014-0299

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.l5, Schedule B (the Act);

AND IN THE MATTER OF an application by Greenfield South Power Corporation for a certificate of public convenience and necessity pursuant to section 8 of the Municipal Franchise Act, R.S.O. 1990, c. M.55.

Before: Ken Quesnelle
Presiding Member and Vice Chair

Cathy Spoel
Member

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Introduction and Summary

Greenfield South Power Corporation (Greenfield) has entered into a 20-year Clean Energy Supply Contract with the Ontario Power Authority (OPA) to construct and operate a natural gas fired power plant in St. Clair Township, near Sarnia, Ontario. This plant is known as the Green Electron Power Project (GEPP)[1].

Greenfield has applied to the Ontario Energy Board (OEB) for a Certificate of Public Convenience and Necessity (Certificate) under section 8(1) of the Municipal Franchises

[1] The plant was originally to be located in the City of Mississauga. On July 10, 2012 it was announced that the GEPP would be located and built the Township of St. Clair.

Act to construct a pipeline and ancillary facilities to connect the GEPP to the Vector Pipeline Limited Partnership pipeline (Vector)[2].

The facilities required to connect the GEPP to the Vector pipeline will be entirely located on Greenfield's property, as the Vector pipeline crosses Greenfield's property. The connection to the Vector pipeline will be by a tap, the installation of which is under the jurisdiction of the National Energy Board as the Vector pipeline is an interprovincial transportation pipeline.[3]

The GEPP is located in the geographical area for which Union Gas Limited (Union) has a Municipal Franchise Agreement with the Township of St. Clair and a Certificate to construct works to supply gas in all of the Township of St. Clair. Union's position is that it has the exclusive right to supply gas in this area unless the OEB specifically orders otherwise.

The Union pipeline is also located on the land owned by Greenfield.

Greenfield and Union have had discussions about the terms on which Union would be able to supply gas to the GEPP. Union offered the following options to Greenfield: Union's T2 firm service and Union's T2 interruptible service.

Greenfield also had discussions with Vector about the terms on which it would supply gas.

As neither of the Union options were acceptable to Greenfield, Greenfield informed Union of its intention to connect to Vector, as in Greenfield's view, Vector's Hourly Firm Transportation service (FT-H) and Operational Variance Service combined with third party storage services better suit Greenfield's business needs than any of the services Union is able to offer at that location.

Union's position is that the proposed pipeline and Vector's service option to supply the gas to GEPP is a bypass of Union's distribution system which has not been justified on the basis of services, costs or exceptional circumstances and would be contrary to the public interest. Union requested that the OEB deny Greenfield's request for a Certificate.

[2] Vector Pipeline is a high pressure transportation natural gas pipeline that extends from Joliet, Illinois to Dawn, Ontario.
[3] The tap is planned to be constructed by Vector and is according to Greenfield blanket approved by NEB's Order XG/XO-100-2012 (Streamlining Order) which covers minor works along approved transmission pipeline. The Vector tap, in Greenfield's submission, is not included in works that are subject to this application.

The OEB has determined that it will grant the Certificate to Greenfield. It is in the public interest to have the applicant choose the service best suited to its needs as long as doing so does not unduly burden Union's other customers who are paying for the distribution assets. Greenfield has demonstrated that the services it needs are not available from Union but can be secured from Vector. There is no evidence that Union's customers will be unduly burdened by granting the Certificate to Greenfield.

The Process

A Notice of Application was issued on September 26, 2014 and was served and published as the OEB directed. The OEB granted intervenor status to Union and the OPA.

The OEB approved the following Issues List for the proceeding:

1. What are the cost/economic factors related to serving the GEPP by Greenfield or Union, on both Greenfield and Union's other customers?

2. What are the environmental impacts associated with Greenfield's gas supply project and are they acceptable?

3. Are there any outstanding landowner matters associated with Greenfield's gas supply project?

4. Is Greenfield a competent builder and operator of the proposed gas supply project?

5. Will granting a Certificate to Greenfield in Union's service area adversely impact Union and Union's ratepayers? For example, will there be stranded assets, lower profit, decreased revenues, etc.?

6. Should the Certificate be granted to Greenfield will there be any effect of increasing or reducing Union's system efficiency overall?

7. If a Certificate is granted are there any conditions of approval that may be appropriate?

An oral hearing was held at the OEB's offices on January 16, 2015.

At the outset of the hearing, Union alleged that Greenfield had already commenced construction of the facilities that will be required to bring the gas from the Vector pipeline to the GEPP, and that this is a breach of the Municipal Franchises Act. Union submitted that the OEB should take this into consideration with respect to whether or not to grant a certificate[4].

Board staff submitted that allegations of this nature are a matter for the OEB's compliance staff to consider through the appropriate compliance procedure where the allegations can be fully investigated.

Greenfield submitted that the issue of whether there has been a contravention of the Municipal Franchises Act should be considered in a separate forum and does not bear on the issue before this Panel with respect to its decision on whether or not it is in the public interest to grant a Certificate.

The OEB decided this issue orally during the hearing, stating that it is not authorized to deal with issues of compliance in the context of this proceeding, and that the matter of whether there has been a breach of the Municipal Franchises Act would be reviewed by the compliance department of the OEB, in a process independent of this proceeding[5].

The Evidence

Greenfield and Union filed evidence in advance of the hearing.

Greenfield also called evidence during the hearing to address Issues 1, 3, 4, and 5. This included evidence prepared by Mr. John Todd, an expert consultant on behalf of Greenfield, documentation in support of Greenfield's competence as a builder and operator, a comparative analysis of features and costs of Vector service versus Union's service options, and impacts on Greenfield and Union's other customers.

Mr. Todd concluded that the present value of the cost to Greenfield over the 20 year term of the OPA contract of Union's T2 interruptible service is $6 million more than the Vector service option. Once the present value of lost profit due to interruptions is included, the difference is closer to $12 million. Mr. Todd also estimated that Union's T2 firm service option would cost $18 million more than Vector's service option.

[4] Tr. Volume 1, pages 4-5, lines 9-28.
[5] Tr. Volume 1, page 13.

Mr. Gregory Vogt, President of Greenfield also testified at the oral hearing. Mr. Vogt explained that Vector's service offering is better aligned with Greenfield's business needs as it provides more flexibility. His evidence was that Greenfield designed its power plant, its business structure, its power agreement, its economic modelling, and its financing on the basis of a certain level of flexibility, control, reliability and access to upstream services and a certain commissioning date, and that the services it is seeking are not available from Union but are available from Vector. He stated that the daily balancing service offered by Union does not meet Greenfield's needs and that its business plan is relying on Vector's overrun service, nomination windows, and interruptible service to balance. Mr. Vogt emphasized that Greenfield needs services it can buy when needed, and sell when not needed.

Greenfield argued that it is in the same position as Greenfield Energy Centre was in 2006[6]. Greenfield also argued that if the Certificate is granted, Union's ratepayers will not see a change in service, rates, assets costs or profits. In response to Union's assertion that the approval of Greenfield's Certificate may lead other generators to apply to bypass Union's system, Greenfield pointed out that there have been no further bypass applications since the OEB granted the Greenfield Energy Centre bypass in 2006.

Union filed evidence that the proposed pipeline and Vector's service option to supply the gas to GEPP would constitute a bypass of Union's distribution system. Union argued that the services provided by Union would be comparable and competitive to any service offered by Vector, and would meet Greenfield's needs.

Union also argued that there are no special circumstances that would justify a favourable bypass decision by the OEB. It was Union's position that the overriding consideration in proposals such as this is the public interest as it arises in the context of energy policy and regulation, including the rational development of gas distribution facilities and the fair and consistent treatment of all gas users. Union added that the OEB's consideration of the public interest in this context has resulted in principles pertaining to postage stamp rates, class rate-making and the sharing of system costs by all end users in a distributor franchised service area. In Union's view, these principles do not support the physical bypass of a distributor franchise area, other than in exceptional circumstances.

Union provided a comparison of the capital contribution, annual transportation and storage costs and present value of these costs over the 20 year term OPA contract of Union's T2 firm and interruptible service options versus the Vector alternative. Union assumed that Greenfield would need 46,400 GJ/day of firm supply deliverability to

[6] OEB RP-2005-0022 (EB-2005-0441; EB-2005-0442; EB-2005-0443; EB-2005-0473)

operate its plant. Based on this and assuming a standard deliverability of 1.2%, Union concluded that its interruptible service is more cost effective than the Vector option by about $6.6 million. Union also disputed Greenfield's assumptions regarding the frequency of interruptions since they were based on service interruptions in Enbridge's central delivery area. With regard to the comparison of facilities construction costs, Union stated that the costs of building a lateral, station, and related facilities from the Sarnia Industrial Line to the GEPP would be approximately the same as the cost to Greenfield of building a lateral, station, and related facilities from Vector to GEPP.

Greenfield's position was that Union's figures for storage costs were wrong because Union's assumptions regarding storage deliverability were over-estimated (16,459 GJ/day needed instead of 46,400 GJ/day as estimated by Union). Greenfield indicated that as a result, the present value of the Vector service option was overstated by about $11 million. Greenfield calculated that Union's T2 interruptible service is still over $12 million more costly that the Vector option, and Union's T2 firm service is still over $18 million more costly than the Vector option.

Union also estimated $26 million in potential annual margin loss to Union and its ratepayers if non-utility generator customers in the Sarnia area and Northern distribution area all bypassed Union. Union stated that this annual margin loss is an estimate assuming that all existing power generating customers would bypass Union but that the actual impact would vary depending on the number of existing customers seeking physical bypass of Union's system. The stand-alone annual margin loss attributable to the GEPP not being supplied by Union was estimated at $1.379 million.

Union argued that Greenfield's application is really about economic gain. Union argued that it is clear that Greenfield does not like the cost of the service. Union further argued that the T2 service is offered to its largest industrial customers which include all seven generating plants in Union's franchise area in southern Ontario. In Union's view, for the purpose of generating electricity, the T2 services it offers serve the needs of generators with respect to flexibility and availability. Union argued that Greenfield's application is analogous to the Cardinal Power case[7], which was rejected by the OEB since the underlying reason for the bypass was found to be economic gain only.

OEB staff submitted that it would be in the public interest to grant the Certificate to Greenfield on the grounds that: (i) it appears that the costs to Greenfield to obtain services from Vector are significantly less than the T2 firm and interruptible options from Union; (ii) there is no evidence of stranded assets other than the costs of the tap to Vector which are not material; (iii) approval of a Certificate for Greenfield would not significantly undermine Union's expectations regarding the likelihood of serving

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customers in its franchise area; (iv) OEB staff is unaware of any margin loss materializing since the issuance of the OEB's decision in the Greenfield Energy Centre in 2006; (v) the indirect adverse impact on other ratepayers is balanced by a direct benefit to Greenfield; (vi) rates for other customers will not increase; (vii) while there may be a lost opportunity in terms of foregone revenues for Union and its ratepayers, there are no lost revenues because the load would be incremental to Union; and (viii) there is no evidence to suggest that Union's system efficiency will be decreased.

OEB's Findings

The OEB hereby grants the Certificate to Greenfield.

Section 8(1) of the Municipal Franchises Act states that a Certificate is necessary before any person can construct works to supply gas in a municipality. The Certificate grants the right to construct infrastructure for the purposes of supplying gas to consumers in the service territory specified. The applicant must show that there is public convenience and necessity.

Section 8. (1) reads as follows:

> Despite any other provision in this Act or any other general or special Act, no person shall construct any works to supply,
>
> (a) natural gas in any municipality in which such person was not on the 1st day of April, 1933, supplying gas; or
>
> (b) gas in any municipality in which such person was not on the 1st day of April, 1933, supplying gas and in which gas was being supplied, without the approval of the Ontario Energy Board, and such approval shall not be given
>
> (c) unless public convenience and necessity appear to require that such approval be given.

The OEB agrees with Union that this is a bypass case.

Union argued that the OEB has consistently determined that Certificates are geographically exclusive because to grant certificates to two organizations for the same service area would make it very difficult to plan future expansions and avoid duplication. Because of the substantial capital investment required to build, maintain and operate the natural gas storage, transmission and distribution systems in Ontario, in general it is less expensive and more efficient to allow only one company to operate within a defined area.

In dealing with a bypass proceeding, the OEB needs to assess the public interest.

The OEB is of the view that a general policy opposing bypasses is not in the public interest. The OEB finds that each application must be evaluated on a case-by-case basis, based on its own merits. The OEB will therefore rely on the evidence in this case to determine whether granting the Certificate is in the public interest.

Greenfield argued that the services that it needs in order to run its business in the fashion it desires are not available from Union. Union argued that the services it can provide are sufficient for Greenfield's stated business needs and therefore the service it can provide is adequate. The OEB finds that only Greenfield can determine what services best suit its business needs.

Both parties relied on previous bypass decisions of the OEB in support of their positions. Greenfield relied on the OEB's conclusions in the 2006 Greenfield Energy Centre decision which stated that it is in the public interest to allow generators the option to operate as economically, efficiently, and cost-effectively as possible by having as much flexibility, control, and access to upstream competitive services as possible and that it is in the public interest for gas customers to have access to the services they require. Union referred to the OEB's decision in the Cardinal Power case[8] where the Board OEB denied an application for a bypass competitive rate on the basis that it was for economic gain only and counter to the principle of postage stamp rates. The OEB finds that the situation of Greenfield now is akin to the circumstances that Greenfield Energy Centre was in in 2006.

The OEB adopts the test for bypass as articulated in the 2006 decision and finds that the case for bypass has been made because the services that Union is able to provide does not meet the needs of Greenfield, there is no stranding of Union assets and there is little if any impact on Union's other customers.

Union argued that the bypass test cannot be that it is in the self-interest of the bypass applicant to bypass the system. The OEB agrees that this would not be an appropriate stand-alone test but the fact that a bypass is in the interest of those seeking it does not negate the possibility that it is also in the public interest and more economically rational. The OEB also agrees that there is no evidence that the approval of a Certificate for Greenfield would significantly undermine Union's expectations regarding the likelihood of serving customers in its franchise area. In that regard, the OEB notes that no margin loss materialized as a direct result of the OEB's decision in the Greenfield Energy Centre in 2006. The OEB also agrees that customers who are connected to a distribution system should contribute to system costs. While there would be a benefit to Union's other ratepayers if Greenfield were to take service from Union, this benefit

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might be the result of providing service which does not meet the needs of Greenfield. As a result of granting the Certificate to Greenfield, the indirect adverse impact on other ratepayers is balanced by a direct benefit to Greenfield. Rates for other customers will not increase as a result of granting the Certificate to Greenfield. While there may be a lost opportunity in terms of foregone revenues for Union and its ratepayers, there are no lost revenues because the load would be incremental to Union.

Finally, the OEB notes that there was no evidence that Greenfield is not a competent builder and operator of the GEPP generation facilities and that there are no environmental impacts and no outstanding landowner matters.

The OEB Orders that:

1. A Certificate of Public Convenience and Necessity, attached as Schedule 1 to this Decision and Order, is granted to Greenfield South Power Corporation to construct a pipeline and associated facilities to connect the Green Electron Power Project generation facilities to the Vector Pipeline in the Township of St. Clair.

2. Greenfield shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB invoice.

Schedule 1
DECISION AND ORDER

EB-2014-0299

APRIL 2, 2015

The Ontario Energy Board hereby grants

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

EB-2014-0299

to

Greenfield South Power Corporation

under section 8 of the Municipal Franchises Act, R.S.O. 1990, c. M.55, as amended, to construct works to supply gas to

connect the Green Electron Power Project generation facilities to the Vector Pipeline in the Township of St. Clair

DATED at Toronto, April 2, 2015

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary