



## Renewable energy generator exempt from transmission licencing requirements

July 12, 2012

Glenn Zacher

In an [interesting case](#) that has been winding its way through the Ontario Energy Board (OEB), Grand Renewable Wind LP (GRWLP) — which was formed for the purpose of owning and operating a 153 MW wind facility in Haldimand County — was exempted from the obligation to obtain a transmitter’s licence for transmission connection facilities it intends to develop and operate to convey its wind generation *and* solar energy generated by a related company, Grand Renewable Solar LP (GRSLP).

In earlier section 81 and leave-to-construct proceedings ([which we wrote about last December](#)), Board Staff and other parties questioned GRWLP’s position that it was exempt from the obligation to obtain a transmission licence under Ontario Regulation 161/99 (O. Reg. 161/99), but the Board ruled that these were not the appropriate forums to decide the matter. However, in early May, the Board, on its own motion under sections 19(4) and 57 of the *OEB Act*, initiated proceedings to determine whether GRWLP was exempt.

GRWLP [argued](#) that it was exempt under O. Reg. 161/99 as a generator/transmitter which proposed to “transmit electricity for a price ... no greater than that required to recover all reasonable costs”. GRWLP also took issue, as an entity whose principle business was generation, from being subject to the full complement of transmission licencing requirements that apply to transmitters like Hydro One (i.e., compliance with Affiliate Relationship Code, subject to rate regulation by OEB, have to establish standalone transmission company, etc.).

In response, Board Staff [queried](#) whether O. Reg. 161/99 was intended to only exempt generators/transmitters that transmitted their *own* generation, in which case GRWLP would not be exempt since it also proposed to convey the generation of GRSLP. Board Staff argued that the language of O. Reg. 161/99 was not as plain as suggested by GRWLP and urged a contextual and purposive interpretation. In particular, Board Staff noted that the fundamental obligation on all transmitters to provide non-discriminatory access to their transmission systems could be undermined if GRWLP was not required to be licenced. Board Staff questioned whether it would be in the public interest to exempt generators/transmitters like GRWLP from open access requirements “especially when such transmission facilities are built on public road allowances [as] there are only a limited number of easily accessible rights of way available in many parts of Ontario”. Board Staff argued “this does not represent an optimal use of a sometimes scarce asset, and is generally not in the public interest”. Indeed in the earlier leave-to-construct proceedings Haldimand County Hydro Incorporated (HCHI) sought to preserve access to GRWLP’s transmission facilities so that HCHI could connect a new transformer station for its distribution system. With regards to GRWLP’s concerns about being burdened by transmission licencing requirements, Board Staff observed that the Board’s licencing powers permitted it to approve an “abbreviated” transmission licence for GRWLP to reduce the regulatory burden.

In [brief reasons released on July 5, 2012](#), the Board ruled that GRWLP was exempt based on the Board's interpretation that the language of O. Reg. 161/99 exempted generators/transmitters from conveying their own generation *and* energy generated by third parties provided that it was transmitted for a price no greater than that required to recover all reasonable costs. The Board's decision will provide helpful clarification for the increasing number of renewable generators that have to construct transmission connection facilities and may have been concerned about any new transmitter-related obligations. That said, the Board did not address — and its decision does not resolve — the transmission access and system planning concerns raised by Board Staff (and HCHI) and these issues may well resurface in future proceedings and other contexts.

DISCLAIMER: This publication is intended to convey general information about legal issues and developments as of the indicated date. It does not constitute legal advice and must not be treated or relied on as such. Please read our full disclaimer at [.www.stikeman.com/legal-notice](http://www.stikeman.com/legal-notice)