

Ontario Energy Board

Commission de l'énergie de l'Ontario



Ontario Energy Board

Filing Requirements For Electricity Transmission Applications

Chapter 4

Applications under Section 92 of the Ontario Energy Board Act

July 31, 2014

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Chapter 4: Filing requirements for electricity transmission projects under Section 92 of the Ontario Energy Board Act (“the Act”)

4.1 Introduction

These filing requirements are intended to assist an applicant in preparing its leave to construct application. It sets out the information that is required to be filed by two broad categories of applicants - rate-regulated applicants and non-rate-regulated applicants - to enable the Board to determine whether a project is in the public interest. The different factors considered by the Board between rate-regulated and non-rate-regulated applications lies in the fact that regulated entities seek to recover costs from the consumers of electricity through their rates, while non-rate-regulated entities provide their own funding.

Section 4.2 applies to both rate-regulated and non-rate-regulated applicants. Further information required for rate-regulated entities is covered in section 4.3 and further information required for non-rate-regulated entities is covered in section 4.4.

4.2 The Regulatory Framework

The Act requires transmitters and distributors to obtain leave of the Board for the construction, expansion, or reinforcement of electricity transmission and distribution lines or interconnections. An “electricity transmission line” is defined under section 89 of the Act as a line, transformer, plant or equipment used for conveying electricity at voltages higher than 50 kilovolts.

Any person who obtains leave of the Board under section 92 or who is exempt from obtaining leave under section 95 may apply to the Board for authority to expropriate lands for the purpose of constructing, expanding, or reinforcing an electricity transmission and/or distribution line or interconnection.

4.2.1 Legislation

The applicable sections of the Act for leave to construct proceedings are sections 92, 95, 96, 97, 99, 101 and 102. Each of these sections is addressed briefly below.

Section 92

s. 92. (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection. 1998, c. 15, Sched. B, s. 92 (1).

Section 92 also applies to distributors' projects involving transformation connection projects (e.g. a transformer station transforming from above 50 kV to below 50 kV), if the transmission line tap is more than 2 km in length; and, facilities with voltages which are above 50kV and with line connections greater than 2km in length regardless of whether they have been "deemed" by the Board to be distribution facilities.

The construction, reinforcement or expansion of an electricity transmission line which is 2 kilometres in length or less is exempt from section 92(1) of the Act¹.

Section 95

Section 95 allows an applicant to seek an exemption from the requirements of section 92 in special circumstances. The onus is on the applicant to establish special circumstances. Some examples of what the Board has considered as constituting special circumstances in past cases include whether there is a need to obtain necessary land rights prior to construction, whether there are any environmental impacts, if there are other concerns raised by landowners, etc.

A project summary report should be submitted with a section 95 application for review, consistent with the requirements described in this document. The level of detail in the submission must reflect the issues or concerns encountered during the evaluation phase of the project.

Section 96

Subsection 96(2) specifies that for the purposes of section 92, in determining whether the construction, expansion or reinforcement of the electricity transmission line or interconnection is in the public interest, the Board shall only consider the following:

"1. The interests of consumers with respect to prices and the reliability and quality of electricity service."

¹ Regulation 161/99 made under the OEB Act, section 6.2

2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources.”

Section 97

Section 97 requires that information on land requirements must be included as part of the leave to construct application. Section 97 states, “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.” An affected landowner means those landowners of property upon, over or under which it is intended to construct facilities.

Section 99

Section 99 relates to expropriation. The Board can order the expropriation of land if it is in the public interest. Compensation issues are dealt with by the *Expropriations Act* and the Ontario Municipal Board. The Board’s consideration of the public interest may be more expansive in a section 99 application than in a section 92 application. For an example, see the discussion of the public interest in Dufferin Wind Power Inc. EB-2013-0268, Procedural Order No. 3 and Decision on Issues, February 7, 2014.

Sections 101 and 102

Upon request, under Section 101 the Board can grant authority to construct upon, over or under a highway, utility line or ditch. Section 102 sets out how compensation for damages will be dealt with if it cannot be agreed upon.

4.2.2 Related Regulatory Hearings

In addition to a leave to construct approval, most projects will require various other (non-Board) regulatory approvals: for example, an environmental assessment approval. In some cases, these approvals will be obtained after the Board issues an order granting leave to construct.

It is possible that other approvals may result in material changes to the project after the project has been reviewed by the Board (for example, a routing change or the imposition of additional costs to rate payers that were not known to the Board). Under such circumstances, an applicant is required to advise the Board. Depending

on the materiality of the change, the applicant may be required to satisfy the Board that the project is still in the public interest.

Outside of the leave to construct application, there are other Board conducted reviews, such as those associated with the review of transmission investments. The Board's authority to review transmitter's capital budgets and set rates is established in subsection 78 (1) of the Act which states "No transmitter shall charge for the transmission of electricity except in accordance with an order of the Board, which is not bound by the terms of any contract." In the case of a rate-regulated transmitter, this could result in the same transmission line construction project coming before the Board in two separate proceedings.

If a leave to construct proceeding is preceded by a transmitter's rate case, the need for the project may not have been dealt with in sufficient detail to satisfy the requirements of a leave to construct proceeding. If the project had received approval in a rate hearing as part of an envelope of expenditures rather than as a discrete approval of the particular project, the Board would, in a subsequent leave to construct hearing, likely revisit the valuation of the project in some detail. The intent, however, is not to re-assess that which has already been specifically addressed in a related proceeding.

4.2.3 The Board's Consideration of a Project

In determining a leave to construct application, the Board seeks information about the project and evaluates whether it is in the public interest taking into consideration aspects of:

- a) Price;
- b) Reliability;
- c) Quality of electricity service; and
- d) Promotion of the use of renewable energy sources.

With respect to need for the project, the Board will only consider matters described in section 96(2) of the Act, and will not consider broader issues.

Further details regarding the need for the project for rate-regulated and non-rate-regulated applicants is set out below.

4.3 Information Required of Rate-regulated Applicants

This section applies only to rate-regulated applicants. Rate-regulated applicants include licensed transmitters that provide transmission services to third parties at Board approved rates. There is an onus on rate-regulated entities whose revenues are derived from ratepayers to satisfy the Board that all expenditures on transmission facilities are required. Applicants that are not rate-regulated are referred to section 4.4

Rate-regulated transmitters and distributors applying for transmission connection projects are subject to additional requirements as set out in the Transmission System Code.

The Board expects an application by a rate-regulated applicant to have the following components:

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4.3.2 Exhibit B: The Application

4.3.2.1 *Administrative*

This section must include the formal signed application, which must incorporate the following:

1. the name of the applicant and any partnerships involved in the application;
2. details of the authorized representative of the applicant, including the name, phone and fax numbers, and email and delivery addresses;
3. an outline of the business of the applicant and the parties to the application;
4. an explanation of the purpose of the project for which leave to construct is being sought;
5. a concise description of the routing and location of the project, including the affected municipalities and regions;
6. an indication of any shared corridors where there could be cross circuit interference, and of any issues related thereto with the owning authority;
7. a description of project components, their locations and purposes;
8. an explanation of how the project is in the public interest, as defined by section 96(2) of the Act; and
9. the current project schedule. Note that the Order of the Board will likely have an expiry date by when the project must have commenced.

4.3.2.2 *Project Overview Documents*

This section of the application provides the background and a summary of the application which will assist the Board in drafting a Notice of Hearing. It must include:

1. a detailed description of location of the project and its components;
2. maps (1:50,000 or more detailed) showing: the route and facility sites;
3. a description of the location of project components and related undertakings;
4. a draft of a drawing suitable for publication with the Notice of Hearing:
This drawing is to indicate the general area of the project and identify features so that potentially affected landowners can determine if they have an interest in the application. The final version of this drawing for publication will be decided following discussion with the Board case manager and the applicant;
5. line drawings of the proposed facility, showing supply connection(s) to the proposed facility and delivery facilities from the proposed facility to any adjacent transmission and/or distribution system(s); and
6. the nominal rating of the main components of the project.

4.3.2.3 *Evidence in Support of Need*

The Board, in determining if the project of a rate-regulated applicant is needed, will consider the aspects mentioned in 4.2.3 and two additional aspects: Project Classification (whether it is a development, connection or sustainment project), and Project Categorization (whether it is discretionary or non-discretionary). The categories and classes have different threshold and criteria for approval.

Furthermore, applications for leave to construct projects which derive from a Regional Integrated Plan will need to demonstrate to the Board that regional issues, including conservation and demand management (“CDM”) measures and alternatives, have been appropriately considered and addressed in developing the applicant’s infrastructure investment proposal.

4.3.2.3.1 *Project Classification*

Rate-regulated projects are classified into three groups based on their purpose, each of which has its own threshold for approval. There are three project classes:

Development Projects are those which:

- provide an adequate supply capacity and/or maintain an acceptable or prescribed level of customer or system reliability for load growth or for meeting increased stresses on the system; or

- enhance system efficiency such as minimizing congestion on the transmission system and reducing system losses.

Connection Projects are those which provide connection of a load or generation customer or group of customers to the transmission system.

Sustainment Projects are those which maintain the performance of the transmission network at its current standard or replacing end-of-life facilities on a “like for like” basis.

Where projects include more than one of the elements of development, connection, or sustainment the applicant must identify the proportional make-up of the project, and then classify the project based on the predominant driver.

In any of the three kinds of projects an investment in the Network may be required. Network facilities are comprised of network stations and the transmission lines connecting them, as defined in the Board’s Transmission System Code (“TSC”).

4.3.2.3.2 Project Categorization

The purpose of project categorization is to distinguish between a project that is “must-do”, **beyond** the control of the applicant (“non-discretionary”) and one that is **at the discretion** of the applicant (“discretionary”).

Non-discretionary Projects

In the case of a non-discretionary project, the applicant must establish that the preferred option is a better project than the alternatives. The applicant need not include a “do nothing” alternative since this alternative would not meet the need criteria. One way for a rate-regulated applicant to demonstrate that a preferred option is the best option is to show that it has the highest net present value as compared to the other viable alternatives. However, this net present value need not be shown to be greater than zero.

Non-discretionary projects may be triggered or determined by such things as:

1. mandatory requirements to satisfy obligations specified by regulatory organizations including NPCC/NERC (the designated ERO in the future) or by the Independent Electricity System Operator (“IESO”);
2. a need to connect new load (of a distributor or large user) or a new generation connection;

3. a need to address equipment loading or voltage/short circuit stresses when their rated capacities are exceeded;
4. projects identified in a provincial government approved plan;
5. projects that are required to achieve provincial government objectives that are prescribed in governmental directives or regulations; and
6. a need to comply with direction from the Ontario Energy Board in the event it is determined that the transmission system's reliability is at risk.

Discretionary Projects

Discretionary projects are proposed by the applicant to enhance the transmission system performance, benefiting its users. Projects in this category may include projects to:

1. reduce transmission system losses;
2. reduce congestion;
3. build a new or enhance an existing interconnection to increase generation reserve margin within the IESO-controlled grid, beyond the minimum level required;
4. enhance reliability beyond a minimum standard; and
5. add flexibility to the operation and maintenance of the transmission system.

4.3.2.4 *Cost Benefit Analysis and Options*

The Board requires cost-benefit analysis evidence of the various options that were considered by the applicant as alternatives to the proposed project. The Board expects that rate-regulated applicants will present:

- the preferred option (i.e. the proposed project);
- alternative options, and, where the project is discretionary, the option of “doing nothing”; and
- whether there is an opportunity for CDM to defer the investment.

The Board will either approve or not approve the proposed project (i.e. the preferred option). It will not choose a project from among significant alternative options. The applicant must present to the Board alternatives which meet the same objectives that the preferred option meets.

4.3.2.5 *Avoiding Non-transmission Alternatives*

Where the applicant lists the benefits of a leave to construct project as avoiding non-transmission alternatives such as a peaking generation facility or a “must run” generation requirement, it is helpful for the applicant to include corroborative evidence from the IESO and/or the Ontario Power Authority regarding the applicant’s quantitative evaluation of such a benefit. This evidence is required to support the need for the project.

4.3.2.6 *Risks*

The applicant is expected to also compare various risk factors for the different options, including, but not limited to:

- financial risk to the applicant;
- inherent technical risks;
- estimation accuracy risks; and
- any other critical risk that may impact the business case supporting the project.

4.3.2.7 *Qualitative Benefits*

If the proposed project alternatives are expected to have significant qualitative benefits that cannot reasonably be quantified, evidence about these qualitative benefits must be provided. The applicant should consider these benefits in ranking the alternatives. Incorporating qualitative criteria may result in a different ranking of projects compared to the ranking based only on quantitative benefits and costs. For example, a project may be compared on the basis of its degree of disruption to property owners with grades of minimal, significant and highly disruptive.

4.3.2.8 *Quantitative Benefits*

Where an applicant attributes market efficiency benefits to a proposed project, such as lower energy market prices, congestion reduction, or transmission loss reduction, the evidence submitted must include quantification of each of the market efficiency benefits listed for that proposed project.

4.3.2.9 *Apportioning of Project Costs*

Where there are costs which need to be apportioned between rate-regulated and non-rate-regulated parties, the applicant must provide details of an agreement on the apportioning of these costs to the rate-regulated party and applicants must provide details to the Board which includes the costs to be borne by the rate-regulated transmitter. This must include:

1. labour - including a breakdown by facility installations;
2. materials - including a breakdown of all facility costs;
3. cost of similar projects constructed by the applicant or by other entities for baseline cost comparisons covering:
 - a. in-service year of the comparator project;
 - b. similarities and differences in terms of voltage level, type of towers, type of terrain, etc.
4. acquisition of land use rights, and land acquisition including permanent and working easements, survey and appraisals, legal fees, crop and damage compensation;
5. direct and indirect overheads broken down by facility installation; and,
6. allowance for funds used during construction.

4.3.2.10 *Connection Projects Requiring Network Reinforcement*

Certain connection projects may require network reinforcement in order to proceed. In addition to the cost benefit analysis, the applicant must supply specific information on the nature and magnitude of the network impacts e.g. changes in generation dispatch and transmission line losses. In circumstances in which the project will trigger the requirement for investment in the transmission network, the applicant shall file a forecast of these costs.

With these types of applications the Board may determine that a transmitter(s) needs to apply for a leave to construct to make the required network upgrades triggered by the proposed connection project. If a leave to construct is necessary, the Board may invite the transmitter(s) to make the needed applications at the same time, or immediately following, the application of the initial applicant.

Applicants are referred to the TSC in regard to cost responsibility for necessary network reinforcement. Section 6.3.5 of the TSC states that "A transmitter shall not require any customer to make a capital contribution for the construction of or modifications to the transmitter's network facilities that may be required to

accommodate a new or modified connection. If exceptional circumstances exist so as to reasonably require a customer to make a capital contribution for network construction or modifications, the transmitter or any other interested person may apply to the Board for direction.”

4.3.2.11 Transmission Rate Impact Assessment

The Board requires information relating to the rate impacts anticipated from transmission investments. Information must cover the short-term impacts as well as long-term impacts of the proposed project. The applicant should refer to the most recent version of the Filing Requirements for Transmission Rate Applications.

4.3.2.12 Establishment of Deferral Accounts

The Board will consider requests for the establishment of deferral accounts to record costs until the conclusion of a rate application. If an applicant chooses to make a request for the establishment of a deferral account, the following eligibility criteria must be met:

- Causation - The forecasted expense must be clearly outside of the base upon which rates were derived;
- Materiality – The forecasted amounts must exceed the Board-defined materiality threshold and have a significant influence on the operation of the distributor, otherwise they must be expensed in the normal course and addressed through organizational productivity improvements; and
- Prudence - The nature of the costs and forecasted quantum must be reasonably incurred although the final determination of prudence will be made at the time of disposition. In terms of the quantum, this means that the applicant must provide evidence demonstrating as to why the option selected represents a cost-effective option (not necessarily least initial cost) for ratepayers.

In addition, applicants must file a draft accounting order which must include a description of the mechanics of the account and provide examples of general ledger entries, and the manner in which the applicant proposes to dispose of the account at the appropriate time.

4.3.3 Exhibit C: Project Details

This section of the application must provide detailed information on the project, focusing on identifying project design features of and operational procedures for the proposed facilities.

4.3.3.1 *The Route*

The Board expects the leave to construct application to be for a single specific route, and that the route will be quite specific from engineering, economic and practical viewpoints. For example, it must be clear which side of the road a line is on, and the specific location of the support towers etc. in relation to affected properties. The route of the line is critical because the Board will only provide leave to construct for a specific route.

Any material deviations to the approved route following Board approval will require further review by the Board. In the course of detailed design and construction some minor deviations from the original route may be required, and the applicant is obligated to advise the Board, which will decide if such changes are of sufficient significance to warrant further examination. Generally changes will be significant if new or existing landowners or public land are affected.

4.3.3.2 *Descriptions of the Physical Design*

1. a section by section description of the physical form of the line;
2. transmission line details, including conductor type, ratings;
3. transmission structure description including the variety of towers;
4. transmission cable burial information and cross-section; and
5. line terminations.

4.3.3.3 *Maps*

1. the route of the line and the Lot number and Concession number of the land over, under, on or adjacent to which the line runs;
2. 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;
3. the right-of-way dimensions and an indication of where the route crosses privately owned land; and

4. indication of where Section 41(9) of the Electricity Act, regarding disagreement over the location of structures, equipment or facilities over, under or on Public streets and highways, may be applicable.

4.3.4 Exhibit D: Design Specification and Operational Data

4.3.4.1 *Operational Details*

The application must provide the following details on the planned operation of the transmission line:

- the control stations; and
- monitoring and metering locations.

4.3.5 Exhibit E: Land Matters

The following information with respect to land matters is required in support of an application:

4.3.5.1 *Description of Land Rights*

A description of the land rights required must be provided including:

1. the type of land rights proposed to be acquired for the project and related facilities (e.g. easement, fee simple);
2. the nature and relative proportions of land ownership along the proposed route (i.e. freehold, Crown or public lands); and,
3. where no new land rights are required, a description of the existing land rights that allow for the project;
4. where no new land rights are required, but the land rights of adjacent properties might be affected e.g. building restrictions on those lands;
5. where section 41(9) of the Electricity Act may be brought to bear for the use of public roads and highways as part of the route.

4.3.5.2 *Land Easements Required*

A description of the land area required including:

1. the width(s) of any right-of-way required on new and/or existing easements;
2. the location and ownership of land with existing easements and of any new easements or land use rights that will be required; and
3. the need and amount of additional temporary working rights required at designated locations such as crossings of rivers, roads, railways, drains and other facilities.

4.3.5.3 *Early Access to Land*

Section 98 of the Act allows a person to apply to the Board for an interim order authorizing that person to enter on land for certain purposes if the person has applied for leave under section 90 or 92 and has complied with section 94. Section 94, as noted above, requires an applicant to 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.

4.3.5.4 *Land Acquisition Process*

A description of the land acquisition process including:

1. identification of the properties and the property owners and/or tenants affected by the proposed construction (landowners line list);
2. evidence of discussion and/or agreements regarding sections of the route where section 41(9) of the Electricity Act may be applicable.

4.3.5.5 *Land-related Forms*

Section 97 operates as a condition precedent to the exercise of the Board's power to grant a leave to construct order pursuant to section 92 of the Act. Under section 97, the Board exercises discretion to approve the form of the agreements that an applicant may offer to an Ontario landowner in relation to the approved route of the proposed transmission or distribution line.

Section 97 of the Act states, "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.”

Appendix A sets out the types of clauses which must be included in an agreement. An applicant must provide this form of agreement to the land owner’s attention and it is expected that this form of agreement will be the initial starting point for a negotiation between a landowner and a utility. However, it is open to the landowner and utility to develop the substantive content of these clauses and any other clauses mutually agreed to in the agreement². Further, with the mutual agreement of both the landowner and the utility, certain clauses may be eliminated in appropriate circumstances.

4.3.6 Exhibit F: System Impact Assessment (“SIA”)

All applicants are required to provide evidence to the Board that connection of the applied for line will not affect the reliability of the IESO-controlled grid. This takes the form of an SIA conducted by the IESO as a part of the IESO Connection Assessment and Approval process.

The IESO evaluates the design of the project and its impact on the reliability of the integrated power system, and identifies any transmission facility enhancements that may be required in order for the facilities to have no negative effect upon the reliability of the grid. The Applicant must provide a statement confirming that it will implement the Requirements noted by the IESO in the SIA.

In the absence of a final SIA, the applicant must submit a draft SIA and inform the Board when the final SIA will be available. Final approval by the IESO and conformance with its conditions is a requirement for granting leave to construct.

4.3.7 Exhibit G: Customer Impact Assessment (“CIA”)

All applicants are required to provide evidence to the Board that the incorporation of the applied for facilities will not degrade the electricity service of customers of the transmitter to which the applied for line is connecting. This evidence takes the form of the Customer Impact Assessment (“CIA”).

² In *Conserve Our Rural Environment v Dufferin Wind Power Inc.* (2013) ONSC 7307, (“CORE”) Justice Gordon stated:

It is important to understand that what the Board approved was a *form* of agreement which is the subject of subsequent negotiation between the parties. It represents terms from which the party propounding the project may not unilaterally resile.

The CIA report is to be completed by the transmitter to which the applicant's transmission facilities are proposed to be connected. A transmitter shall carry out a CIA for any proposed new or modified connection where:

- the connection is one for which the IESO's connection assessment and approval process requires a system impact assessment; or
- the transmitter determines that the connection may have an impact on existing customers.

A transmitter may decide not to carry out a CIA for any proposed new connection or modification that is not subject to an SIA. In such a case, the transmitter would notify existing customers in the vicinity, advising them of the proposed new connection or modification and of the transmitter's decision not to carry out a CIA on the basis that no customer impact is expected.

A transmitter would provide each affected customer with a new available fault current level at its delivery point(s). This would allow each customer to take, at its own expense, action to upgrade its facilities as may be required to accommodate the new available fault current level up to the maximum allowable fault levels set out in Appendix 2 of the TSC.

4.3.8 Exhibit H: Aboriginal Consultation

Duty to consult issues have arisen in a number of electricity leave to construct proceedings before the Board. The Board has made significant findings regarding its role respecting the duty to consult in the application by Yellow Falls FP to build a transmission line from a small hydro-electric generating facility to the IESO grid (the "Yellow Falls decision")³. Prior to hearing detailed evidence on the specifics of the dispute, the Board decided to hear submissions on the Board's jurisdiction to consider Aboriginal consultation issues at all in the context of an electricity leave to construct application.

After considering written argument on the issue, the Board decided that it did not have jurisdiction to consider Aboriginal consultation issues in an electricity leave to construct application⁴. The Board held that the restriction imposed by s. 96(2) of the Act limited its review to a consideration of price, reliability, the quality of electrical service, and the promotion, where applicable, of the Government of Ontario's

³ EB-2009-0120, Decision on Questions of Jurisdiction and Procedural Order No. 4, issued November 18, 2009 ("Yellow Falls").

⁴ *Ibid*

renewable energy policies. The Board was clear that its decision did not mean that no duty to consult existed in this case. It found, rather, that the Board had no authority to consider these issues. The Board pointed to the Environmental Assessment process as a suitable forum for the hearing of duty to consult issues.⁵

4.4 Information required of Non Rate-regulated Applicants

The following filing requirements apply to leave to construct applications made by non-rate-regulated applicants.

4.4.1 Exhibit A: The Index

	Content	Described in
Exhibit A	Index	4.4.1
Exhibit B	The Application	4.4.2
	Administrative	4.4.2.1
	Project Overview Documents	4.4.2.2
	Evidence in Support of Need	4.4.2.3
	Impact of Non-rate-regulated Project on Rate-regulated Transmitter	4.4.2.4
	Apportioning of Project Costs	4.4.2.5
	Connection Projects Requiring Network Reinforcement	4.4.2.6
Exhibit C	Project Details	4.4.3
	The Route	4.4.3.1
	Descriptions of the Physical Design	4.4.3.2
	Maps	4.4.3.3
Exhibit D	Design Specification and Operational Data	4.4.4
	Operational Details	4.4.4.1
Exhibit E	Land Matters	4.4.5
	Description of Land Rights	4.4.5.1
	Land Easements Required	4.4.5.2
	Early Access to Land	4.4.5.3
	The Land Acquisition Process	4.4.5.4
	Land-related Forms	4.4.5.5

⁵ *Ibid*, pp. 9-10.

Exhibit F	System Impact Assessment	4.4.6
Exhibit G	Customer Impact Assessment	4.4.7
Exhibit H	Aboriginal Consultation	4.4.8

4.4.2 Exhibit B: The Application

4.4.2.1 *Administrative*

This section must include the formal signed application, which must incorporate the following:

1. the name of the applicant and any partnerships involved in the application;
2. details of the authorized representative of the applicant, including the name, phone and fax numbers, and email and delivery addresses;
3. an outline of the business of the applicant and the parties to the application;
4. an explanation of the purpose of the project for which leave to construct is being sought;
5. a concise description of the routing and location of the project, including the affected municipalities and regions;
6. an indication of any shared corridors where there could be cross circuit interference, and of any issues related thereto with the owning authority;
7. a description of project components and their locations, activities, and related undertakings;
8. an explanation of how the project is in the public interest, as defined by section 96(2) of the Act; and
9. the current project schedule. Note that the Order of the Board will likely have an expiry date by when the project must have commenced.

4.4.2.2 *Project Overview Documents*

The evidence in this section provides the background and a summary of the application, and assists the Board in drafting a Notice of Hearing. This must include:

- a detailed description of location of the project and its components;
- maps (1:50,000 or larger) showing: the route, facility sites and any proposed ancillary facilities;
- a description of the location of project components and related undertakings;

- a draft of a drawing suitable for publication with the Notice of Hearing: This drawing is to indicate the general area of the project and identify features so that potentially affected landowners can determine if they have an interest in the application. The final version of this drawing for publication will be decided following discussion with the Board case manager and the applicant.
- line drawings of the proposed facility, showing supply connection(s) to the proposed facility and delivery facilities from the proposed facility to any adjacent transmission and/or distribution system(s); and
- the nominal rating of the main components of the project, including transformers.

4.4.2.3 *Evidence in Support of Need*

Project justification delineates the responsibilities and necessary evidentiary components required for the project review. The responsibility for the provision of all evidence for the entire case rests with the applicant.

The Board, in accordance with section 96(2) of the Act, requires an applicant of a non-rate regulated proponent-funded project to establish that the project fulfills needs which are in the public interest. This would normally include items such as the need to connect a generator to supply the IESO-controlled grid, or the need to connect a load to the IESO-controlled grid, etc. It is expected that the applicant will submit evidence that it has a valid contract with the OPA to supply renewable generation.

4.4.2.4 *Impact of Non-rate-regulated Project on Rate-regulated Transmitter*

Since a project to transmit electricity cannot be isolated from the grid there are likely related works to be completed in relation to the applied for project. In circumstances in which the project will trigger the requirement for investment in the transmission network, the applicant shall file a forecast of these costs. The Board requires a detailed reference to any applications or approvals for any other projects relating to the applied for project. The need for the other project/s must also be described. For example, if there is an intermediate transmitter connection required outside of the current application then the applicant must provide the details in this section of the application.

The Board, for example, may not grant leave to construct a transmission line if a related project to connect it to the grid was not allowed to proceed, or if the

proponent was not granted a generation licence to own and/operate the generation facility from which the line is intended to convey power. In such a case the Board may require evidence that the generation licence will be granted, or make the leave to construct conditional on receipt of the licence.

Most of the projects proposed by non-rate-regulated applicants are designed to connect generation or load sites or plants to the existing IESO controlled grid. The financial risk of constructing new transmission facilities lies with the owners and shareholders of the company, and not with rate payers.

As rate payer money is typically not involved, non-regulated applicants generally do not need to satisfy the Board that the expenditures on their own transmission facilities are cost effective. However, in certain circumstances these owners and shareholders may be required by the Board to share some or all of the costs associated with Network Reinforcement, as set out in Section 6.3 of the Transmission System Code ("TSC"). In that case the Board will want to ensure that the shared costs are appropriately assigned and will require appropriate detailed information.

Section 6.3 of the TSC sets out how cost sharing will need to be justified. Transmitters and distributors applying for transmission connection projects must include additional information as set out in the TSC, in their applications to the Board, such as the calculation of any capital contribution, and the relevant annual connection rate revenues over the applicable evaluation period if the costs are not fully recoverable in connection rate revenues.

4.4.2.5 *Apportioning of Project Costs*

Where there are costs which need to be apportioned between rate-regulated and non-rate-regulated parties, the applicant must provide details of an agreement on the apportioning of these costs to the rate-regulated party and applicants must provide details to the Board which includes the costs to be borne by the rate-regulated transmitter. This must include:

1. labour - including a breakdown by facility installations;
2. materials - including a breakdown of all facility costs;
3. cost of similar projects constructed by the applicant or by other entities for baseline cost comparisons covering:
 - a. in-service year of the comparator project;
 - b. similarities and differences in terms of voltage level, type of towers, type of terrain, etc.

4. acquisition of land use rights, and land acquisition including permanent and working easements, survey and appraisals, legal fees, crop and damage compensation;
5. direct and indirect overheads broken down by facility installation; and,
6. allowance for funds used during construction.

4.4.2.6 Connection Projects Requiring Network Reinforcement

Certain connection projects may require network reinforcement in order to proceed. In addition to the cost benefit analysis, the applicant must supply specific information on the nature and magnitude of the network impacts e.g. changes in generation dispatch and transmission line losses.

With these types of applications the Board may determine that a transmitter(s) needs to apply for a leave to construct to make the required network upgrades triggered by the proposed connection project. If a leave to construct is necessary, the Board may invite the transmitter(s) to make the needed applications at the same time, or immediately following, the application of the connecting customer.

Applicants are referred to the TSC in regard to cost responsibility for necessary network reinforcement. Section 6.3.5 of the TSC states that “A transmitter shall not require any customer to make a capital contribution for the construction of or modifications to the transmitter’s network facilities that may be required to accommodate a new or modified connection. If exceptional circumstances exist so as to reasonably require a customer to make a capital contribution for network construction or modifications, the transmitter or any other interested person may apply to the Board for direction.”

4.4.3 Exhibit C: Project Details

This section of the application must provide detailed information on the project, focusing on identifying project design features of and operational procedures for the proposed facilities.

4.4.3.1 *The Route*

The Board expects the leave to construct application to be for a single specific route, and that the route will be quite specific from engineering, economic and practical viewpoints. For example, it must be clear which side of the road a line is on, and the specific location of the support towers etc. in relation to affected properties. The route of the line is critical because the Board will only provide leave to construct for a specific route.

Any material deviations to the approved route following Board approval will require further review by the Board. In the course of detailed design and construction some minor deviations from the original route may be required, and the applicant is obligated to advise the Board, which will decide if such changes are of sufficient significance to warrant an examination by the Board and affected parties. Generally changes will be significant if new or existing landowners or public land are affected.

4.4.3.2 *Descriptions of the Physical Design*

1. a section by section description of the physical form of the line;
2. transmission line details, including conductor type, ratings;
3. transmission structure description including the variety of towers;
4. transmission cable burial information and cross-section; and
5. line terminations.

4.4.3.3 *Maps*

1. the route of the line and the Lot number and Concession number of the land over, under, on or adjacent to which, the line runs;
2. 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;
3. the right-of-way dimensions and an indication of where the route crosses privately owned land; and
4. indication of where Section 41(9) of the Electricity Act, regarding disagreement over the location of structures, equipment or facilities over, under or on Public streets and highways, may be applicable.

4.4.4 Exhibit D: Design Specification and Operational Data

4.4.4.1 *Operational Details*

The application must provide the following details on the planned operation of the transmission line including:

- the control stations
- monitoring and metering locations

4.4.5 Exhibit E: Land Matters

The following information with respect to land matters is required in support of an application:

4.4.5.1 *Description of Land Rights*

A description of the land rights required must be provided including:

1. the type of land rights proposed to be acquired for the project and related facilities (e.g. easement, fee simple);
2. the nature and relative proportions of land ownership along the proposed route (i.e. freehold, Crown or public lands); and,
3. where no new land rights are required, a description of the existing land rights that allow for the project.
4. where no new land rights are required, but the land rights of adjacent properties might be affected e.g. building restrictions on those lands;
5. where section 41(9) of the Electricity Act may be brought to bear for the use of public roads and highways as part of the route.

4.4.5.2 *Land Easements Required*

A description of the land area required including:

1. the width(s) of any right-of-way required on new and/or existing easements;
2. the location and ownership of land with existing easements and of any new easements or land use rights that will be required; and
3. the need and amount of additional temporary working rights required at designated locations such as crossings of rivers, roads, railways, drains and other facilities.

4.4.5.3 *Early Access to Land*

Section 98 of the Act allows a person to apply to the Board for an interim order authorizing that person to enter on land for certain purposes if the person has applied for leave under section 90 or 92 and has complied with section 94. Section 94, as noted above, requires an applicant to 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.

4.4.5.4 *The Land Acquisition Process*

A description of the land acquisition process including:

1. identification of the properties and the property owners and/or tenants affected by the proposed construction (landowners line list);
2. Evidence of discussion and/or agreements regarding sections of the route where section 41(9) of the Electricity Act may be applicable.

4.4.5.5 *Land-related Forms*

Section 97 operates as a condition precedent to the exercise of the Board's power to grant a leave to construct order pursuant to section 92 of the Act. Under section 97 the Board exercises discretion to approve the form of the agreements that an applicant may offer to an Ontario landowner in relation to the approved route of the proposed transmission or distribution line.

Section 97 of the Act states, "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."

Appendix A sets out the types of clauses which must be included in an agreement. An applicant must provide this form of agreement to the land owner's attention and it is expected that this form of agreement will be the initial starting point for a negotiation between a landowner and a utility. However, it is open to the landowner and utility to develop the substantive content of these clauses and any other clauses

mutually agreed to in the agreement⁶. Further, with the mutual agreement of both the landowner and the utility, certain clauses may be eliminated in appropriate circumstances.

4.4.6 Exhibit F: System Impact Assessment (“SIA”)

All applicants are required to provide evidence to the Board that connection of the applied for line will not affect the reliability of the IESO-controlled grid. This takes the form of an SIA conducted by the IESO as a part of the IESO Connection Assessment and Approval process.

The IESO evaluates the design of the project and its impact on the reliability of the integrated power system, and identifies any transmission facility enhancements that may be required in order for the facilities to have no negative effect upon the reliability of the grid. The Applicant must provide a statement confirming that it will implement the Requirements noted by the IESO in the SIA.

In the absence of a final SIA, the applicant must submit a draft SIA and inform the Board when the final SIA will be available. Final approval by the IESO and conformance with its conditions is a requirement for granting leave to construct.

4.4.7 Exhibit G: Customer Impact Assessment (“CIA”)

All applicants are required to provide evidence to the Board that the incorporation of the applied for facilities will not degrade the electricity service of customers of the transmitter to which the applied for line is connecting. This evidence takes the form of the Customer Impact Assessment (“CIA”).

The CIA report is to be completed by the transmitter to which the applicant’s transmission facilities are proposed to be connected. A transmitter shall carry out a CIA for any proposed new or modified connection where:

- the connection is one for which the IESO’s connection assessment and approval process requires a system impact assessment; or

⁶ In *Conserve Our Rural Environment v Dufferin Wind Power Inc.* (2013) ONSC 7307, (“CORE”) Justice Gordon stated:

It is important to understand that what the Board approved was a *form* of agreement which is the subject of subsequent negotiation between the parties. It represents terms from which the party propounding the project may not unilaterally resile.

- the transmitter determines that the connection may have an impact on existing customers.

A transmitter may decide not to carry out a CIA for any proposed new connection or modification that is not subject to an SIA. In such a case, the transmitter would notify existing customers in the vicinity, advising them of the proposed new connection or modification and of the transmitter's decision not to carry out a CIA on the basis that no customer impact is expected.

A transmitter would provide each affected customer with a new available fault current level at its delivery point(s). This would allow each customer to take, at its own expense, action to upgrade its facilities as may be required to accommodate the new available fault current level up to the maximum allowable fault levels set out in Appendix 2 of the TSC.

4.4.8 Exhibit H: Aboriginal Consultation

Duty to consult issues have arisen in a number of electricity leave to construct proceedings before the Board. The Board has made significant findings regarding its role respecting the duty to consult in the application by Yellow Falls FP to build a transmission line from a small hydro-electric generating facility to the IESO grid (the "Yellow Falls decision")⁷. Prior to hearing detailed evidence on the specifics of the dispute, the Board decided to hear submissions on the Board's jurisdiction to consider Aboriginal consultation issues at all in the context of an electricity leave to construct application.

After considering written argument on the issue, the Board decided that it did not have jurisdiction to consider Aboriginal consultation issues in an electricity leave to construct application⁸. The Board held that the restriction imposed by s. 96(2) of the Act limited its review to a consideration of price, reliability, the quality of electrical service, and the promotion, where applicable, of the Government of Ontario's renewable energy policies. The Board was clear that its decision did not mean that no duty to consult existed in this case. It found, rather, that the Board had no authority to consider these issues. The Board pointed to the Environmental Assessment process as a suitable forum for the hearing of duty to consult issues⁹.

⁷ EB-2009-0120, Decision on Questions of Jurisdiction and Procedural Order No. 4, issued November 18, 2009 ("Yellow Falls").

⁸ *Ibid*

⁹ *Ibid*, pp. 9-10.

Appendix A: Draft Form of Lease or Easement Agreement

Essential Easement Considerations

The form of agreement will be the initial starting point for a negotiation between a landowner and utility. However it is open to the landowner and utility to develop the substantive content of these clauses and any other clauses mutually agreed to in the agreement. Please note that adhering to this form of agreement does not limit the Board's discretion to either approve or not approve a form of agreement submitted in a proceeding.

1. Legal Description of Properties

A complete and accurate description of each of the affected properties must be provided. A full legal description is ideal, but even when this is not available, some description is necessary, even if only described by address, visual depiction or reference to the owners.

2. Description of the Easement Area

The easement area (in other words the portion of property to which one party is granted permission to use or access) must be depicted visually. Such a depiction need not be elaborate, but a clear "drawing" of the relevant easement area will help provide clarity and avoid potential disputes. A professional survey is helpful

3. Covenant Not to Disturb the Use of the Easement – Right of Access

Although it may have a clearly defined right to use the owner's property, the party granted easement rights must also be sure that the owner's use of the property will not create practical problems. The easement agreement should include language that protects the party granted the easement rights a right to undisturbed use of the easement.

4. Determination of Maintenance Obligations

Even after rights and non-disturbance issues are clarified, the parties to an easement agreement face the issue of who will take care of that portion of the property, pay for any needed repairs or address related problems that occur. The parties should determine who will maintain the easement area.

5 Decommissioning

A decommission clause should set out that the energy company will be responsible to cover the cost of decommissioning the facilities and restoring any damage done to the easement lands. This clause should also have specific procedures for the decommissioning process.

6. Independent Legal Advice (“ILA”)

Provision must be made that both parties have had the option to obtain legal advice. Note in some cases before the Board, the agreement has provided that the ILA for the landowner would be paid for by the utility.

7. Liability: Indemnification and Exculpation

The parties should consider their potential liabilities with respect to their ownership or use of the property.

8. Insurance

An easement agreement needs to clearly state any obligations of the parties to maintain any forms of insurance. Considerations would obviously include property insurance, but may also include other coverage as well, as dictated by the circumstances.

9. Default Provisions and Termination

Some consideration must be made for events or behavior on the part of either party that will terminate the easement. A property owner may want to include certain activities (including failure to make any required payments) that will result in termination of the easement. Conversely, the other party will want to clarify that breaches (or at least certain breaches) of the agreement explicitly do not result in termination of its easement rights. Possible considerations must include failure to make requirement payments to the property owner, failure to fulfill any maintenance obligations, failure to pay any required taxes or insurance premiums, and any other matters that are deemed relevant by the parties. Much of the detail with respect to default and termination will be dependent upon the unique nature of each situation.

10. Dispute Resolution

Provision setting out the dispute resolution procedure to be used in case of disagreement.

End of document