

DECISION

**NSUARB-NSPI-P-401.36
2010 NSUARB 2**

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE PUBLIC UTILITIES ACT

- and -

IN THE MATTER OF A REQUEST by **NOVA SCOTIA POWER INCORPORATED** and **AMHERST WIND POWER LP** to resolve a dispute with respect to two issues under the Generator Interconnection Agreement

BEFORE: Margaret A. M. Shears, Q.C., Vice chair
Kulvinder S. Dhillon, P.Eng., Member
Roberta J. Clarke, Q.C., Member

COUNSEL: **NOVA SCOTIA POWER INCORPORATED**
Nicole Godbout, LL.B

AMHERST WIND POWER LP
David MacDougall, LL.B
Matthew Clarke, LL.B

APPLICATION DATE: July 28, 2009

FINAL SUBMISSIONS: November 16, 2009

DECISION DATE: January 7, 2010

DECISION: The Board has the jurisdiction and authority to review and modify the GIA; Section 9.6.1 and Appendix G should not be changed; FERC's "At or Beyond" rule applies in this case; BUS is a Network Upgrade and the GIA is modified - Amherst's responsibility is limited to \$2.35 million of the total cost of \$4.53 million.

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I INTRODUCTION

[1] By letter dated July 28, 2009 (“the Application”), Nova Scotia Power Incorporated (“NSPI”) requested the Nova Scotia Utility and Review Board (“the Board”) to resolve a dispute between NSPI and Amherst Wind Power LP (“Amherst”) with respect to two questions relating to the Generator Interconnection Agreement (the “GIA”). The Board’s role in this matter is the result of its May 31, 2005 decision approving NSPI’s Open Access Transmission Tariff (“OATT”) application, and the provision in the OATT which states that disputes between parties can be reviewed by the Board for resolution following the process set out in the OATT.

[2] On May 15, 2009, Amherst notified NSPI of its request to terminate the negotiations in accordance with Section 11.2 of the Standard Generator Interconnection Procedures (the “GIP”). On July 13, 2009, Amherst requested that NSPI file an unexecuted GIA with the Board, pursuant to Sections 11.2 and 11.3 of the GIP. NSPI filed the unexecuted GIA with the Board along with the Application, received by the Board on August 5, 2009, which sets out the two issues in dispute.

[3] The parties requested that the Application be determined on the basis of written submissions only. The schedule for submissions was set out in a letter from the Board Clerk dated October 21, 2009 which established the following deadlines:

- | | |
|------------|---|
| Oct 26/09: | Amherst Wind Power Information Requests to NSPI
NSPI Information Requests to Amherst Wind Power
Board Information Requests to both parties. |
| Nov 9/09: | Responses filed for all information requests of October 26, 2009. |

Nov 16/09: Final submissions from both parties.

[Board letter to parties, October 21, 2009, p. 1]

[4] The following is a summary of the Board's findings in this matter, for reasons which are set out later in this decision:

1. The Board has jurisdiction to determine whether the GIA is appropriate and required for system reliability and has the authority to modify the GIA if necessary to ensure it meets the purpose and intent of the GIP.
2. The Board finds that the provisions of Section 9.6.1 (Power Factor Design Criteria) and the proposed Appendix G of the GIA are appropriate.
3. The Board finds that the Point of Interconnection is on NSPI's side of the 138 kV transformer disconnect switch.
4. The Board finds that the FERC "At or Beyond" Rule is applicable to the GIA.
5. The Board finds that the Three Breaker Ring Bus ("BUS") is required for the interconnection of the Amherst Facility.
6. The Board finds that the BUS is a Network Upgrade.
7. The Board finds that a portion of the costs advanced by Amherst are recoverable and amends the GIA accordingly.

[5] Where the Board has capitalized abbreviations in this decision, the terms have the meaning given to them in the GIP/GIA.

II OVERVIEW

[6] Amherst is developing a wind farm near Amherst, Cumberland County, Nova Scotia. It entered into negotiations with NSPI to interconnect the energy produced to NSPI's 138 kV transmission line (L-6535) between Macan, Nova Scotia and Memramcook, New Brunswick.

[7] After the completion of various required studies which commenced in 2005, NSPI and Amherst proceeded to the negotiation of a GIA based on the standard form approved by the Board in its OATT decision. The GIA sets out the terms and conditions upon which Amherst requests interconnection to the NSPI transmission system. NSPI, in its Application, stated:

... Amherst and NSPI have completed the required steps of the interconnection process and are at the final stage of negotiating a GIA, **the last stage before interconnection.**
[Emphasis added.]

[NSPI Application, p. 1]

[8] The parties reached agreement on all but two points - the provisions of Section 9.6.1 and Appendix G in relation to the requirement for a +/- 0.95 power factor; and NSPI's requirement for a BUS and related issues - both technical matters.

[9] When the parties are unable to agree upon a GIA which both are otherwise prepared to execute, Sections 11.2 and 11.3 of the GIP provide that:

11.2 Negotiation

Notwithstanding Section 11.1, at the request of the Interconnection Customer the Transmission Provider shall begin negotiations with the Interconnection Customer concerning the appendices to the GIA at any time after the Interconnection Customer executes the Interconnection Facilities Study Agreement. The Transmission Provider and the Interconnection Customer shall negotiate concerning any disputed provisions of the appendices to the draft GIA for not more than 60 Calendar Days after tender of the final Interconnection Facilities Study Report. If the Interconnection Customer determines that

negotiations are at an impasse, it may request termination of the negotiations at any time after tender of the GIA pursuant to Section 11.1 and request submission of the unexecuted GIA with the Board or initiate Dispute Resolution procedures pursuant to Section 13.5.

...

11.3 Execution and Filing

...The Interconnection Customer shall either: (i) execute two originals of the tendered GIA and return them to the Transmission Provider; or (ii) request in writing that the Transmission Provider file with the Board an (sic) GIA in unexecuted form. As soon as practicable, but not later than ten Business Days after receiving either the two executed originals of the tendered GIA (if it does not conform with a Board-approved standard form of interconnection agreement) or the request to file an unexecuted [GIA], the Transmission Provider shall file the GIA with the Board, together with its explanation of any matters as to which the Interconnection Customer and the Transmission Provider disagree and support for the costs that the Transmission Provider proposes to charge to the Interconnection Customer under the GIA. An unexecuted GIA should contain terms and conditions deemed appropriate by the Transmission Provider for the Interconnection Request. If the Parties agree to proceed with design, procurement, and construction of the facilities and upgrades under the agreed-upon terms of the unexecuted GIA, they may proceed pending Board action.

[2005 NSUAR B P-880, Exhibit 2 of Exhibit N-1]

[10] NSPI has asked the Board to confirm the unexecuted GIA as appropriate for system reliability—confirming the requirement for the +/- 0.95 power factor; the requirement for the BUS with the consequential implications relating to the Point of Interconnection; the BUS being part of the Transmission Provider’s Interconnection Facilities; and no reimbursement to Amherst for the significant cost of the BUS.

[11] Amherst asked the Board to modify the GIA by:

- (1) inserting into Appendix G a term that the +/- 0.95 power factor would only be required if identified by the System Impact Study (“SIS”);
- (2) confirming the adequacy of a two breaker configuration rather than the BUS; and
- (3) confirming that the BUS is a network upgrade, the cost for which Amherst is entitled to be reimbursed according to Section 11.4.1 of the GIA.

[12] In response, NSPI stated that the Board did not have jurisdiction to make the modifications proposed by Amherst. It argued that the jurisdiction of the Board was solely “...to confirm whether the unexecuted GIA is appropriate for system reliability”.¹

III ISSUES, ANALYSIS AND FINDINGS

[13] The issues for the Board to decide in this matter are:

- A. What does the Board’s jurisdiction allow it to do?
- B. Is the Board bound by decisions of the Federal Energy Regulatory Commission (“FERC”)?
- C. Should GIA Section 9.6.1. (Power Factor Design Criteria) and Proposed Appendix G be modified?
- D. With respect to the BUS requirement:
 - (1) Is the Point of Interconnection proposed by NSPI appropriate?
 - (2) Is the FERC “At or Beyond” Rule applicable to the NSPI/Amherst GIA?
 - (3) Is the BUS required for the interconnection of the Amherst Facility?
 - (4) Provided it is required, is the BUS a Network Upgrade?
 - (5) Are the costs to be advanced by Amherst for Network Upgrades recoverable by Amherst?

The Board will deal with these issues individually below.

¹ Exhibit N-10, p. 2

A. Jurisdiction of the Board

[14] Section 18 of the *Public Utilities Act*, R.S.N.S. 1992, c. 11, as amended, (“*PUA*” or the “*Act*”) provides:

- s. 18 The Board shall have the general supervision of all public utilities, and may make all necessary examinations and inquiries and keep itself informed as to the compliance by the said public utilities with the provisions of law and shall have the right to obtain from any public utility all information necessary to enable the Board to fulfil its duties.

[15] Section 19 of the *Act* permits summary investigation by the Board in certain instances, including “...an investigation of any matter relating to any public utility [that] should for any reason be made”.

[16] Sections 116(1) and 117(2) of the *Act* apply to NSPI in this regard and state as follows:

- s. 116 (1) This Act shall be interpreted and construed liberally in order to accomplish the purposes thereof, and where any specific power or authority is given the Board by the provisions of this Act, the enumeration thereof shall not be held to exclude or impair any power or authority otherwise in this Act conferred on the Board.
- s.117 (2) This Act applies to the Nova Scotia Power Incorporated and the Nova Scotia Power Incorporated is a public utility within the meaning of this Act.

[17] The Board’s supervision of all utilities is modified by the provisions of s. 24 of the *Act* which states:

- s. 24 Subject to this Act, the powers, rights, privileges and obligations secured to or imposed upon any public utility by any statute, or by any contract or agreement made under the authority of any statute, shall not be subject to the provisions of this Act, and nothing in this Act contained shall authorize the Board to alter, enlarge or diminish such rights, powers, privileges or obligations or to impair the obligations of any contract, except any contract or agreement relating to rates, tolls, charges or schedules which the Board is authorized by this Act to regulate and control, but the Board may at any time inquire into any such rights, powers, privileges or obligations in so far as the exercise or observance thereof affects the public interest and may make such recommendations to the Legislature in connection therewith as may be deemed just and proper.

[18] NSPI has argued that it would not be appropriate or permissible for the Board to make modifications to the GIA which Amherst has proposed. NSPI submitted that there is no such authority in the *Act*, and referred to Board decisions in *Re Nova Scotia Power Inc.*, 2004 NSUARB 118 (sometimes referred to as *Black River Hydro*); *Re Barrington Wind Energy Ltd.*, 2005 NSUARB 98; and *Re Nova Scotia Power Incorporated*, 2009 NSUARB 111. NSPI stated that in all of those cases the Board had refused to become involved in matters of contract, finding it had no jurisdiction to do so.

[19] Amherst disagreed with NSPI's rationale and argued that section 11.4 of the GIP gives the Board authority to modify the terms of a GIA. It provides:

...If the Interconnection Customer executes the final GIA, the Transmission Provider and the Interconnection Customer shall perform their respective obligations in accordance with the terms of the GIA, **subject to modification by the Board**. Upon submission of an unexecuted GIA, both Interconnection Customer and Transmission Provider shall promptly comply with the unexecuted GIA, **subject to modification by the Board**." [Emphasis added.]

[2005 NSUARB P-880, Exhibit 2 of Exhibit N-1]

[20] In response to Board IR-10(a) and (b), regarding the last sentence of Section 11.3 of the GIP, Amherst stated:

...this provision (like section 11.4) is intended to allow the Transmission Provider and the Interconnection Customer to proceed with interconnection activities simultaneously with a Board proceeding, such as the current one, in which the outstanding issues regarding an unexecuted GIA are being resolved. The Board action that is anticipated by section 11.3 is the Board's determination regarding those outstanding issues....The reference in section 11.4 to the parties complying with the terms of the unexecuted GIA "subject to modification by the Board" means that, in the event the Board modifies the terms of the unexecuted GIA, the parties are required to comply with the terms of the GIA as revised by the Board following its determination of the outstanding issues...

[Exhibit N-13, pp. 23-24]

[21] Amherst also relied on the 2007 decision of FERC in *Niagara Mohawk Power Corporation d/b/a National Grid*, 121 F.E.R.C. P61, 104² as support for its argument that the Board could direct removal of language from the GIA (and implicitly, add language to the GIA). The Board will address the relevance of FERC jurisprudence later in this decision.

[22] Submitting that the Board had jurisdiction under these circumstances to make changes, Amherst stated that no other interpretation could be placed on the provisions of the GIP. Counsel for Amherst suggested that:

...there would be little value to the filing of an unexecuted GIA with the Board if the only right the Board had was to accept or reject NSPI's position....

[Exhibit N-11, p.3]

[23] In its response to Board IR-16, Amherst also argued that the three decisions of the Board cited by NSPI could all be distinguished from the current matter, stating that:

Unlike the circumstances of those aforementioned cases, the present matter relates to an agreement (the GIA) which is prescribed by the GIP, a Board-approved regulatory instrument. The GIP process specifically contemplates that the appendices to the GIA (which are specific to the particular Interconnection Customer's Interconnection request and project) will be negotiated and completed between the Transmission Provider and each individual Interconnection Customer in accordance with the process established in GIP section 11....

[Exhibit N-13, p. 32]

Findings

[24] Amherst suggests in its Final Submission³ that it takes NSPI's response to Board IR-25(b) to indicate it agrees with Amherst's position that the Board is to make

² Exhibit N-3, copy of decision

³ Exhibit N-19, p. 3

determinations with respect to the issues raised. In the Board's view, it should not interpret NSPI's response as anything more than confirmation of its original position that the Board is limited to determining whether the provisions of the unexecuted GIA are appropriate and required for system reliability.

[25] In *Black River Hydro*, referred to above, the Board was dealing with complaints by a number of individuals regarding rates and conditions established by NSPI in its solicitation for renewable energy under two megawatts. The Board found it did not have the statutory authority to hear the complaints.

[26] In *Re Barrington Wind Energy*, noted earlier, the Board was asked to direct NSPI to accept energy from Barrington's facilities at Canso, on terms agreed by the parties and to immediately negotiate price. Barrington argued that NSPI's failure to negotiate with independent power producers (IPPs) frustrated development and discouraged market participation by IPPs.

[27] In that case, the Board again concluded that it did not have authority to order NSPI to enter into contractual negotiations or arrangements with potential suppliers of energy and dismissed Barrington's complaint for lack of jurisdiction.

[28] More recently, in *Re Nova Scotia Power Incorporated*, as set out above, the Board was asked by NSPI and others for approval of a power purchase agreement (PPA) and a waiver of the requirements of NSPI's Fuel Manual relating to the competitive solicitation of purchased power. The Board reviewed its decisions in *Black River Hydro* and *Re Barrington Wind Energy*, both of which NSPI's counsel in that case sought to

distinguish. The Board quoted with approval the comments of the Board in *Black River Hydro*, where the Board declined to “...micro-manage a significant portion of NSPI’s daily operations”.⁴

[29] The Board also found it was outside its jurisdiction to pre-approve the prudence of the expenditure provided for in the agreement which NSPI had reached with NewPage and others. The Board stated that:

....The *PUA* does not expressly confer authority on the Board to do so. Moreover, such authority cannot reasonably be implied from the Board’s general powers under the *PUA* because its exercise would unduly intrude into the management of the Utility, would be contrary to the public interest and would be inconsistent with prior Board decisions.

[Board Decision, 2009 NSUARB 111, p. 22]

[30] For the reasons explained below, the Board finds it does have jurisdiction to modify the terms of the unexecuted GIA filed with the Board.

[31] In *Re Nova Scotia Power Inc.*, 2005 NSUARB 50, the Board approved a consensus proposal for an OATT and consequently the GIP. The OATT sets out the terms and conditions and rates on which third parties could use the NSPI transmission system. It envisages the Board making rulings on a GIA, as under the OATT scheme, it would not be fair or reasonable for NSPI to dictate the terms of interconnection.

[32] Further, it is clear to the Board that it is reasonable to interpret the words “...modification by the Board...” as authorization to administer change. NSPI’s submission on this matter - to effectively stamp the GIA as “...appropriate and required for system

⁴ Board Decision 2004 NSUARB 118, p. 12

reliability” - is not a fair or reasonable interpretation of the word “modify”. Accordingly, the Board finds that it is authorized by the terms of its own approved GIP to modify the GIA.

[33] The terms of the GIP direct the parties to either submit an unexecuted GIA to the Board or proceed to the dispute resolution mechanism set out in the GIP. The only reason to file the unexecuted GIA with the Board is to have the Board deal with the GIA in some way, as it would be pointless to file it otherwise. If NSPI was correct in its view that the Board can only approve or disapprove an unexecuted GIA, this could be the “Board action” contemplated by Section 11.3 of the GIP. Upon review, it is clear to the Board that there would be no reason to include the words “subject to Board modification” in Section 11.4 of the GIP unless the Board had the ability and authority to make some change or alteration in the GIA.

[34] The Board finds there is a fundamental difference between this matter and the *Black River Hydro*, *Re Barrington Wind Energy*, and *Re NSPI* cases. In each of those cases the Board was being asked to either determine or approve **the price which NSPI would pay** to third parties. The matter at hand involves the **cost of interconnection to be paid by a third party** (an IPP) who will be supplying energy to NSPI. In this case, the Board is not dealing with a cost to be paid by NSPI. Instead, this relates to a charge to be imposed on a customer by NSPI for use of NSPI’s transmission system. Accordingly, the Board finds that the above-noted cases do not apply.

[35] The Board has concluded this does not involve “...micro-managing...” NSPI, nor is it “...unduly [intruding] into the management of the Utility...”⁵ The Board finds it has jurisdiction to determine whether the GIA is appropriate and required for system reliability, and the authority to modify the GIA, if necessary, to ensure that it meets the purpose and intent of the GIP.

B. FERC Jurisprudence

[36] Amherst has submitted that the Board should be guided, but not bound by, decisions of FERC (and the US Courts of Appeal) because:

...given that the NSPI OATT, as well as the GIP/GIA were initially created through FERC regulatory processes, it is natural that FERC would be the authority looked to by any party seeking guidance on the interpretation of such documents. The *pro forma* GIP/GIA has been rigorously challenged by petitioners before FERC and in the process has received significant analysis by the FERC commissioners. In contrast to the comprehensive body of jurisprudence that has been generated by these FERC proceedings, the Nova Scotia GIP/GIA has to date received very little consideration by the Board and the relevant industry stakeholders in this province.

Beyond the simple persuasiveness of the FERC authorities regarding the OATT and the GIP/GIA, there is another important reason why an interpretive approach should be adopted that is consistent with FERC’s. A fundamental aspect of the FERC OATT “open access” regime is its requirement of reciprocity between public utilities and transmission providers that are participants in that regime....In order to gain direct access to the electricity markets of FERC OATT participants, it was necessary for NSPI to implement its own OATT so that those market participants can gain access to the Nova Scotia market (limited as it may be at present) on roughly equivalent terms. Therefore, the reciprocity requirements of the FERC open access regime require that the OATT, and its related elements (such as the GIP/GIA), be applied in an essentially consistent manner throughout the participating jurisdictions, which is to say, generally in accordance with FERC guidance.

[Exhibit N-1, p. 3]

[37] NSPI’s response was that the Board is not bound by FERC decisions because FERC is a US regulatory agency and, therefore, its decisions are not binding on

⁵ Board Decision, 2009 NSUARB 111, p. 22

Canadian regulatory agencies. The Board does note that this argument is the opposite of that made by NSPI, in its submissions, where it urged the Board to adopt the dissenting opinion of then FERC Chairman Kelliher in FERC Order 661 (issued June 2, 2005) on the question of the requirement for the +/- 0.95 power factor for wind generators.⁶ The Board can only conclude from NSPI's response to Board IR-13(d), that it expects the Board to take some guidance from FERC jurisprudence.⁷

Findings

[38] In its decision on the *OATT*, *supra*, the Board approved an OATT and GIP which were consistent with the FERC approved OATT. In its application in that case, NSPI stated that it :

...has developed a FERC compatible open access transmission tariff, which will ensure open and non-discriminatory access for all Eligible Customers....

[Board Decision, 2005 NSUARB 50, p. 3]

[39] On the question of reciprocity, the Board notes that in the OATT decision, NSPI referred to the actions taken in New Brunswick, where New Brunswick Power had sought approval of a FERC *pro forma* based OATT which:

...contains reciprocity provisions that would deny NSPI and its affiliates access to the New Brunswick Transmission System if Nova Scotia does not have a comparable OATT...

[Board Decision, 2005 NSUARB 50, p. 3]

⁶ Exhibit N-10, pp. 3-5

⁷ Exhibit N-12, Board IR-13(d)

[40] It may be correct to say that FERC's concerns with reciprocity relate to access to and from the United States. However, it cannot be denied that reciprocity is an important consideration.

[41] While FERC itself has said it would not attempt to regulate Canadian utilities with respect to their Canadian operations, (see H.Q. Energy Services (U.S.) Inc. 79 FERC 61,152)⁸, it is clear that Canadian regulators do consider FERC decisions. For example, Counsel for NSPI and Amherst both directed the Board's attention to a decision dated September 10, 2009 where the British Columbia Utilities Commission took note of FERC's principles and guidance in the matter of a complaint by TransCanada Energy Ltd. against the British Columbia Transmission Corporation.⁹

[42] The Board agrees with Amherst that there is merit in taking guidance from the extensive jurisprudence of FERC in dealing with a recognized FERC compatible OATT and GIP/GIA, particularly given the lack of experience in dealing with these matters in Nova Scotia. The Board also agrees that to do so is in the public interest and strengthens the concept of reciprocity which is important in what is essentially a North American electricity market, even though the Board's authority is restricted to Nova Scotia.

[43] While the Board finds the decisions of FERC (and the US courts) on regulatory matters to be both informative and instructive, it does not consider itself bound by that jurisprudence. The Board's comment on FERC decisions which relate to the matters at hand are set out below.

⁸ Exhibit 18 - Attachment 1, copy of decision

⁹ Exhibit 18 - Attachment 2 and Exhibit 19, Appendix I, copy of decision

C. GIA Section 9.6.1 - Power Factor Design Criteria and Proposed Appendix G

[44] As noted above, the Board approved the OATT to allow the use of NSPI's transmission system by IPPs to supply electricity to NSPI and others. Included in the OATT is a GIA to be executed by NSPI and the IPPs, setting out the arrangement between the parties.

[45] Under Section 9.6.1 of the GIA, interconnected IPPs are required to meet a +/- 0.95 power factor requirement at the point of interconnection, with the exception of wind generators. NSPI has added a new Appendix G to the GIA which sets out specific requirements and provisions for wind generation.

[46] Power factor is the ratio of real power (measured in kilowatts, kW) to apparent power (measured in kilovolt amperes, kVA) at any given point and time in an electrical circuit. Generally, it is expressed as a percentage or per unit. If new additions to the system do not provide appropriate power factor ability, the overall system power factor capability is reduced and at some point would need to be increased to maintain the system reliability level.

[47] The Board-approved OATT was based on the then FERC-approved OATT, which did not include a specific power factor provision for wind generators. In the intervening years, FERC has developed standards for wind generators which are part of its OATT, and has ordered all entities under its jurisdiction to include these wind standards in its OATT.

[48] NSPI has used the current FERC standards in the proposed Amherst GIA with the exception highlighted below :

A wind generating plant shall maintain a power factor within the range of 0.95 leading to 0.95 lagging, measured at the Point of Interconnection as defined in this LGIA, **if the Transmission Provider's System Impact Study shows that such a requirement is necessary to ensure safety or reliability...**[Emphasis in original.]

[Exhibit N-5]

[49] NSPI noted that it has adopted design criteria which state that all new generation added to its system must be capable of a +/- 0.95 power factor and argued that there is no requirement for it to justify this on a project by project basis.

[50] The Board understands that both parties agree that the power factor measurement point should be the Point of Interconnection between NSPI and IPP facilities. However, as described below, there is a disagreement on the location of the Point of Interconnection.

[51] Amherst is of the view that NSPI's Appendix G to the GIA should be the same as that of the FERC requirements for wind generators. While it recognizes that the Board is not legally bound by FERC regulations, Amherst stated that the Board should give weight to FERC standards in the same manner as it did when it approved an OATT. In Amherst's view, NSPI should consider the requirement of power factor on a case by case basis as part of the SIS.

[52] Amherst also relied on FERC's Order No. 661-A to support its position. That Order confirmed that the SIS is appropriate for determining whether power factor capability is needed.¹⁰ In its decision, FERC concluded that this requirement will not degrade the

¹⁰ Exhibit N-7, copy of decision

overall electrical system safety or reliability. FERC also found that this requirement limits opportunities for undue discrimination by ensuring that transmission providers do not require IPPs to pay for costly equipment that is not required for reliability.

[53] NSPI has stated that a power factor of +/-0.95 is a requirement of the Nova Scotia Power System Operator (NSPSO) and is necessary to provide system reliability.¹¹ This requirement is for all IPPs, including wind generators, and is applicable to every transmission interconnected generating facility in NSPI's system. NSPI's argument is, in part, that this requirement eliminates any discrimination for wind generators and avoids undue preference which is clearly prohibited in the Board approved OATT.¹²

[54] In its response to Board IR-4(a), NSPI described a study undertaken by in house staff that showed that a minimum amount of reactive power is required at the system generator facilities. NSPI provided this study as support for the +/-0.95 power factor value.¹³

[55] NSPI used the dissenting opinion by the former FERC Chairman in FERC Order No. 661-A in which he states that the FERC Order gives preferential treatment to wind generators by exempting them from meeting the same power factor requirement as all other non-wind generators. In his opinion, there is no reason for this differential treatment. His position is also supported by the North American Electric Reliability Council (NERC) and other intervenors in the above case before FERC. The former chairman

¹¹ NSPI Application, p. 5

¹² Exhibit N-10, p. 5

¹³ Exhibit N-12, Board IR-4(a)

supported returning to the position put forward in FERC's Notice of Proposed Rulemaking i.e., requiring all generators to meet the same power factor standard, absent a waiver from the Transmission Provider for wind generators.¹⁴

[56] NSPI also provided information on the power factor criteria as used in New Brunswick and Ontario.¹⁵

Findings

[57] The Board has considered all the information and, for the reasons set out below, agrees with NSPI's position.

[58] Both parties have used the FERC amendment to its OATT to support their position. The FERC Order No. 661-A included comments from entities which objected to the FERC approach of requiring a SIS to show that the power factor capability on the IPP facilities is a requirement.

[59] NSPI expects to add significant wind generation over the next decade to meet its Renewal Energy Standards requirements, but the location and size of these additional facilities are presently unknown. This is a major uncertainty in relying on a present day SIS for one incremental plant.

[60] In its final submission, Amherst stated that the interconnection technical requirement should address "... impacts on the present system - not requirements that

¹⁴ Exhibit N-7, dissenting opinion, p. 2 and Exhibit N-10, pp. 3-5

¹⁵ Exhibit N-12, Board IR-4

address a speculative scenario that may or may not materialize.”¹⁶ In the Board’s opinion, given the current uncertainty and potential impact on the overall system, studies should be developed with a long term perspective.

[61] The Board understands that each system needs a basic amount of reactive power in order to meet reliability criteria.¹⁷ Therefore, any new generation that does not provide reactive power reduces the operating margin in the overall system and puts additional burden on future IPPs to establish the minimum reactive power requirements. This will also result in varying requirements for new IPPs and create possibilities of discrimination and cost shifting from current to future IPPs.

[62] The SIS for Amherst (January 2006 and the Re-Study in September 2008) both assumed a +/- 0.95 power factor capability. No studies have been done without this capability. Therefore, Amherst (or its predecessor) was well aware of NSPI’s power factor requirements for their facilities early in the process.

[63] The Board agrees with the position of NSPI and finds that no change should be made to Section 9.6.1, and Schedule G, of the unexecuted GIA with respect to this requirement.

¹⁶ Exhibit N-19, p. 17

¹⁷ Exhibit N-12, Board IR-4(a)

D. Three Breaker Ring Bus (“BUS”)

[64] Amherst has broken down this issue into five sub-issues as follows:

- (a) Is the location for the "Point of Interconnection" proposed by NSPI appropriate?
- (b) Is the FERC "At or Beyond" Rule applicable to the NSPI/Amherst GIA?
- (c) Provided it is approved, is the three breaker ring bus a Network Upgrade?
- (d) Are the costs to be advanced by Amherst for Network Upgrades recoverable by Amherst?
- (e) Is a three-breaker ring required for the interconnection of the Amherst Facility?

[Exhibit N-1, p.5]

The Board will address these sub-issues in the order set out by Amherst.

(1) Is the location for the “Point of Interconnection” appropriate?

[65] The location of the Point of Interconnection is linked to issues (b), (c) and (d), noted above, and is critical because it will determine whether the BUS is a Transmission Interconnection Facility or a Network Upgrade.

[66] Amherst is of the view that the Point of Interconnection should be on its side of the BUS. NSPI, however, is of the view that the Point of Interconnection is on a section of the existing 138 kV line (L6535) and the BUS is a Transmission Interconnection Facility and, therefore, Amherst is responsible for all costs.

[67] Amherst noted that NSPI defined the Point of Interconnection in its Facilities Study Infra-Structure Report for the project at a location which Amherst supports. Amherst

also noted that this location generally accords with the location of the Point of Interconnection that was identified by Amherst in the drawing attached to the GIA.¹⁸

[68] Amherst referred to the *Niagara Mohawk* FERC decision in support of its position, where two of the three interconnections required a three breaker ring bus. In that case, FERC ruled that the BUS was a network facility and the Point of Interconnection is where the generator's tie line connects to the BUS.¹⁹

[69] Amherst has provided, in response to Board IR-4(a)²⁰, a copy of the single line diagrams submitted by Niagara Mohawk in the *Niagara Mohawk* FERC decision. These diagrams show a Point of Interconnection on a three breaker ring bus in a location similar to that proposed by NSPI for the Amherst facility. As noted in the previous paragraph, in its decision, FERC did not agree with *Niagara Mohawk* and changed the Point of Interconnection from that proposed to the location where the generator's tie line connects to the BUS.

[70] Amherst also provided, in response to Board IR-1(d)²¹, single line diagrams for three of its U.S. affiliated companies that own a wind generation project in a U.S. jurisdiction with a FERC based OATT. These projects are connected through a three breaker ring bus. The defined Point of Interconnection on these diagrams is consistent with the FERC *Niagara Mohawk* decision.

¹⁸ Exhibit N-1, pp. 9-10

¹⁹ Exhibit N-1, p. 10

²⁰ Exhibit N-12, Board IR-4(a)

²¹ Exhibit N-12, Board IR-1(d)

[71] NSPI defined the Point of Interconnection as the 138 kV line (L-6535) termination node between 138 kV Breakers (92N-601 and 92N-602) at the Amherst wind farm substation.²²

[72] NSPI further stated that the Point of Interconnection is where the Interconnection Facilities connect to its Transmission System.²³ Amherst had requested interconnection to the transmission line (L-6535) in its interconnection request and that is where the Point of Interconnection should be.

Findings

[73] The Board understands that the Point of Interconnection was defined in the Facilities Study Infra-Structure Report prepared by NSPI. In its response to a Board IR, NSPI states that this report was completed December 30, 2008, forwarded to Amherst January 21, 2009, and completed with customer comments on March 13, 2009.²⁴ This report is attached to the unexecuted GIA and notes that the Point of Interconnection is on NSPI's side of the transformer 138 kV disconnect switch. As it happens, this is the same location where Amherst is requesting the Point of Interconnection.

²² NSPI Application, Appendix A

²³ Exhibit N-10, p. 5

²⁴ Exhibit N-12, Board IR-11(a)

[74] The unexecuted GIA has changed the Point of Interconnection to the new location as noted by NSPI. NSPI stated that there was an error in the Facilities Study Infrastructure Report, which was corrected in the unexecuted GIA.²⁵

[75] The Board has reviewed the single line diagrams provided by Amherst in its response to the Board IR-4(a) and IR-1(d)²⁶. Taking into account FERC's decision to change the Niagara Mohawk recommended Point of Interconnection, the Board finds that in all of the diagrams provided, the Point of Interconnection is defined at a location that supports Amherst's position.

[76] Having reviewed all the information, the Board agrees with Amherst that the Point of Interconnection is on NSPI's side of the 138 kV transformer disconnect switch.

(2) Is the FERC "At or Beyond" Rule Applicable?

[77] The FERC "At or Beyond" rule arises in the definition of the Interconnection Facilities and Network Upgrades. Interconnection Facilities are those between the Generating Facility and the Point of Interconnection and Network Upgrades are those at or beyond the Point of Interconnection. Under the FERC rules, the Interconnecting Customer is entitled to recover the costs of the Network Upgrades, but not Interconnection Facilities.

²⁵ Exhibit N-12, Board IR-11(b)

²⁶ Exhibit N-12, Board IRs 4(a) and 1(d)

[78] Amherst's position is that the FERC approach should be adopted by the Board with respect to the interconnection costs and Network Upgrade costs.²⁷ Amherst points out that in the United States, petitioners asked the U.S. Court of Appeal to overturn the FERC rule, in part based upon arguments of cost causation. The Court supported the FERC position in its ruling.²⁸

[79] The Transmission Provider's Interconnection Facilities include equipment from the Point of Change of Ownership to the Point of Interconnection. In the unexecuted GIA, the Point of Change of Ownership is the NSPI side of Amherst's High Voltage Switch 92N-661²⁹. In accordance with this definition, NSPI considers that the BUS is part of NSPI's Interconnection Facilities because the BUS is between the Point of Change of Ownership and the Point of Interconnection.

[80] NSPI also stated that the sole use and purpose of the addition of these facilities is to enable the interconnection of the Amherst facilities to NSPI's system.

Findings

[81] The Board finds that the Point of Change of Ownership, as defined by NSPI, is close to the point which Amherst requests as the Point of Interconnection. The Board also did not find any comments from Amherst on the location of the Point of Change of

²⁷ Exhibit N-1, p. 12

²⁸ Exhibit N-2, National Association of Regulatory Commissioners *et al v.* FERC, copy of decision

²⁹ NSPI Application, Appendix A

Ownership, as defined by NSPI. The Board finds that the Point of Change of Ownership, as defined by NSPI, is the correct position.

[82] The Board also agrees with FERC that the costs required to connect the new generation facilities up to the Point of Interconnection are the responsibility of the Connecting Customer. The Board has already dealt with the issue of the Point of Interconnection and will address costs later in this decision.

(3) If required, is the BUS a Network Upgrade?

[83] Amherst believes that, if the BUS is approved by the Board, it is a Network Upgrade and not a part of the Interconnection Facilities.³⁰ Amherst quoted the definition of Interconnection Facilities and highlights the phrase "...are sole use facilities and shall not include... Network upgrades".³¹ Amherst asserted the BUS is not a "sole use facility."

[84] Again, Amherst referred to the FERC Decision in *Niagara Mohawk*, where FERC stated in its ruling that the BUS configuration does provide benefits to both the IPPs and *Niagara Mohawk's* other customers. Amherst takes the position that FERC reasoning is directly applicable to the issue before the Board.

[85] Amherst stated:

In determining Amherst's ultimate cost responsibilities for a three breaker ring, Amherst encourages the Board to reflect on the fact that this more costly configuration is not a technical necessity for the interconnection of the Amherst facility, (as discussed throughout Amherst's prior submissions) but instead that it is required by NSPI as a result of NSPI's

³⁰ Exhibit N-1, pp. 12-14.

³¹ Exhibit N-1, p. 13

system-wide considerations rather than facility-specific considerations (as NSPI submissions make abundantly clear).

[Exhibit N-19, pp. 2-3]

[86] NSPI cited the same definition of Transmission Providers Interconnection Facilities as used by Amherst. In NSPI's opinion, the "...sole use and purpose of the addition of these facilities is to enable the interconnection of the Amherst wind generating facility to the existing transmission system."³² In NSPI's view, the BUS is an Interconnection Facility and not a Network Upgrade.

[87] NSPI elaborated by stating that the only reason the BUS exists is to enable the interconnection of Amherst and to minimize any adverse effects on the existing reliability of the line in accordance with the interconnection criteria. It argued that without the generating facility, no requirement would exist for modifications to the transmission system by NSPI.³³

[88] NSPI further stated that:

The three breaker ring substation will exist solely for the benefit of the Amherst Facility and absent Amherst's presence is not required for the NSPI system. It is therefore not a Network Upgrade.

[Exhibit N-18, p. 3]

Findings

[89] Following a careful review, the Board believes that benefits of the BUS do extend to parties other than Amherst, i.e., customers both in Nova Scotia and in New Brunswick.

³² Exhibit N-10, p. 6

³³ Exhibit N-12, Board IR-15(a)

[90] FERC has considered similar cases in the United States and ruled in those cases that the facilities are not sole use facilities and therefore should be classified as network facilities.

[91] One of the reasons for this finding is the difficulty the Board has had in reviewing NSPI's position on this issue. On one hand, NSPI appears to indicate that these facilities are not a Network Upgrade as they would not be required absent Amherst's presence. However, the Board notes that absent any Interconnection Customer, none of this would be required, i.e., no GIP, GIA or any of the definitions set out in them. In particular, there is no need for a definition of Network Upgrades as they would not exist. NSPI also says that the Interconnection Facilities, including the BUS, will benefit the customers in Nova Scotia and New Brunswick.

[92] The Board finds that the BUS is a Network Upgrade.

(4) Are the costs for Network Upgrades recoverable?

[93] Amherst's position is that section 11.4.1 of the GIA makes it clear that Amherst is entitled to have the funds it advances for Network Upgrades reimbursed.³⁴ Amherst also states that Section 11.4.1 provides for an outside reimbursement date of 20 years and that this date applies whether or not any repayments have been made with respect to transmission credits arising from transmission service.

³⁴ Exhibit N-1, p. 14

[94] Amherst quotes from FERC Order No. 2003-C³⁵ to provide support for its position. In this Order, FERC ruled that the 20 year lump sum reimbursement must be paid even if no transmission service is taken. Amherst recommends that the Board follow the FERC interpretation of Section 11.4.1.

[95] NSPI's position is that even if the BUS is a Network Upgrade, there is no transmission tariff payment and as such paragraph 11.4.1 does not apply.³⁶ With respect to FERC Order 2003-C, NSPI states that it does not form part of the Board approved GIP/GIA in Nova Scotia.

[96] NSPI noted that its Request for Proposals and PPAs for this project stated that all costs to interconnect to the transmission system are the responsibility of the customer. As such, the customer bids should have included an amount to recover interconnection costs in PPA pricing. NSPI also stated that to allow cost recovery under Section 11.4.1 would result in double recovery by IPPs. NSPI also argued that other IPPs could apply for a similar reimbursement.

Findings

[97] It appears to the Board that the PPA states that the customer has to pay for all interconnection costs. The customer has one way to recover any incurred cost and this is to include them in its bid price to NSPI. One could argue that the customer would, to some extent, enjoy a double recovery if the FERC interpretation of Section 11.4.1 is

³⁵ Exhibit N-9, copy of Order

³⁶ Exhibit N-10, p. 7

followed. On the other hand, to allow no recovery would in effect make the BUS the full cost responsibility of the Interconnection Customer.

[98] In response to a Board IR, NSPI stated that its preliminary interconnection estimate in June of 2005, for the Amherst interconnection facilities, was \$2.35 million, based on a two breaker configuration.³⁷ The estimate in the January 11, 2006 study was \$2.61 million.³⁸ The Facilities Study Infra-Structure Report estimate for the BUS is \$4.53 million (page 6 of 53 of the report).

[99] Capital costs were not part of the September 22, 2008 restudy and therefore the capital costs remained the same³⁹. The increase in cost to approximately \$4.53 million appears to have occurred in the Facilities Study Infra-Structure Report, a draft of which was provided to Amherst on January 31, 2009.⁴⁰ The Board finds that the NSPI capital cost estimate provided to Amherst remained at \$2.61 million for a period of approximately three years (January 11, 2006 to January 31, 2009).

[100] The Board finds that the capital cost increase occurred quite late in the process. NSPI's explanation for this late requirement is the new 2008 Interconnection Design Criteria agreed to by the three Maritime utilities.

[101] The question before the Board is, what would the interconnection costs be without the system requirements? One approach would be to use the interconnection cost

³⁷ Exhibit N-12, Board IR-16(b)

³⁸ Exhibit N-12, Board IR-9, Attachment 3

³⁹ Exhibit N-12, Board IR-9, p. 6

⁴⁰ Exhibit N-12, Board IR-9, p. 6

estimate provided to Amherst in June, 2005, i.e., \$2.35 million. This would mean that out of a total cost of approximately \$4.53 million, \$2.35 million are Transmission Provider's Interconnection Costs (to be fully funded by Amherst) and the remaining \$2.18 million are Network Upgrades (to be paid by NSPI).

[102] The Board finds this to be a reasonable approach, and the GIA is modified accordingly.

(5) Is a BUS Required?

[103] Amherst questioned the need of the BUS for interconnection to NSPI facilities. Amherst takes the position that NSPI has not demonstrated that the BUS is required to interconnect the project in accordance with Good Utility Practice. In Amherst's view, NSPI is attempting to saddle Amherst with expenses beyond those for which Amherst is legitimately responsible pursuant to the Board approved GIA.⁴¹

[104] Amherst refers to the various interconnection studies done for this facility. In particular, it references the 2005 SIS which states that the Amherst facility could be interconnected by means of either a two-breaker or a single breaker configuration.

[105] NSPI states that the BUS is a requirement of the NSPSO to provide system reliability and uses NSPI management approved criteria for determining the interconnection requirements for each new generating facility.⁴² Under this criteria, the Amherst

⁴¹ Exhibit N-1, p. 16

⁴² NSPI Application, pp. 7-8

interconnection falls into Category B, which is tapped to Non BPS (Bulk Power System) 138 kV or 69 kV lines, with existing generation or transfer limit constraint, and requires the BUS, with protection, at line tap or at site.⁴³

[106] NSPI also noted that the transmission line proposed by Amherst for interconnection is an inter-provincial tie and is important for interprovincial power transfers and system reliability. It points out that the BUS eliminates adverse effects for New Brunswick's Sackville area customers. NSPI stated that in its professional opinion, and that of the NSPSO, the BUS is necessary.

[107] NSPI stated that there is a mutual understanding between NSPI and NB Power that any interconnection on any inter-tie lines will be accomplished using the BUS configuration.⁴⁴ This understanding appears to have been reached at a September 9-10, 2008 meeting between NSPI, NB Power and Maritime Electric Company Limited. NSPI's response also provided information that illustrates the New Brunswick System Operator's ("NBSO") commitment to meeting the BUS requirement. NSPI advised that:

1. The NBSO has posted its wind interconnection requirements on its WEB page (in draft)
2. The NBSO System Impact Study for the Aulac wind farm on the NB side of L-6535 required a three breaker ring bus.
3. NBSO response to a survey which states that for interconnection BPS lines a three breaker ring bus is required.

[Exhibit N-12, pp. 2-3]

⁴³ NSPI Application, p. 8

⁴⁴ NSPI Application, p. 7

[108] NSPI's response to Board IR-7(e)⁴⁵ lists impacts on the NB Power system if the BUS configuration is not used. Board IR-10(a) and (b)⁴⁶ requested information on the relative reliability impacts on NSPI and NB Power customers based on the various interconnection configurations. NSPI's response listed the impacts from the simplest interconnection (no protection) to the BUS configuration. NSPI's conclusion in support of the BUS states that: "This arrangement eliminates all issues identified with the alternatives discussed above." The issues which were identified included outages to the Interconnected Customers, outages to NB Power load in Sackville, and impacts on the import capability from New Brunswick to Nova Scotia.⁴⁷

Findings

[109] NSPI's 2005 estimate for Amherst's facility was based on a two breaker configuration. All the interconnection studies for load flow, stability, and short circuit analysis used this two breaker configuration.⁴⁸ The performance of the Amherst plant in these studies did not indicate any problems.⁴⁹

[110] It is important to note that Amherst relied upon NSPI's original assessment of the interconnection requirement, and resulting cost, for approximately three years before

⁴⁵ Exhibit N-12, p. 4

⁴⁶ Exhibit N-12, pp. 1-4

⁴⁷ Exhibit N-12 (NSPI response to IR-10)

⁴⁸ Exhibit N-12 (NSPI response to IR-12)

⁴⁹ Exhibit N-12, Attachment 1 to Board IR-5

notification of a change was received. Unfortunately, the new requirement of the BUS has had an adverse financial impact on Amherst's project.

[111] However, the Board understands the requirement for the BUS for this interconnection. The interconnection is on a critical inter-provincial line that is important for transfers to and from the NB system. Any potential reduction on the import capability of this line is likely to have cost impacts on other NSPI customers.

[112] The NSPI Interconnection Design Criteria categorizes the type of interconnection required based on the importance to the system of the line to which the IPPs wished to interconnect. Amherst will be connected to a critical line and therefore the BUS is required to ensure the safety and reliability of the transmission system both in Nova Scotia and New Brunswick.

[113] The Board finds that the BUS is a requirement for interconnection by Amherst.

IV SUMMARY OF FINDINGS

[114] The Board has found that it has the jurisdiction and authority to determine whether the GIA is appropriate and required for a system reliability and also to modify the GIA, if necessary, to ensure that it meets the purpose and intent of the GIP.

[115] Having reviewed all of the evidence and submissions of the parties in this matter, the Board finds that the provisions of section 9.6.1 and Appendix G should not be modified.

[116] The Board finds in favour of Amherst on the issue of the Point of Interconnection and has determined that the FERC “At or Beyond” rule applies in this case. The Board agrees with NSPI that the BUS is required for the interconnection of the Amherst facility as the interconnection is on a critical inter-provincial line and, therefore, required to ensure the safety and reliability of the transmission system. However, the Board finds that the BUS is a Network Upgrade and that the GIA should be modified accordingly. As a result, Amherst’s responsibility for costs is limited to \$2.35 million out of a total \$4.53 million.

[117] Finally, the Board notes, as set out in the letter dated July 13, 2009, from Amherst to NSPI⁵⁰, that the milestone dates in Appendix B of the GIA will require revision.

[118] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 7th day of January, 2010.

Margaret A. M. Shears

Kulvinder S. Dhillon

Roberta J. Clarke

⁵⁰ NSPI Application, Attachment 2

APPENDIX - A LIST OF EXHIBITS

Ex No.	Description	Date Filed
N-1	Submission of Amherst Wind Power LP - Request to file Unexecuted GIA with NSPI	September 2/09
N-2	Appendix 1 - National Association of Regulatory Utility Commissioners, et al., Petitioners v. - Federal Energy Regulatory Commission, Respondent - US Court of Appeals, District of Columbia Circuit (Amherst Wind)	September 2/09
N-3	Appendix 2 - Niagara Mohawk Power Corporation/Federal Energy Regulatory Commission - Order Accepting Interconnection Agreements Subject to Conditions, Approving Settlement, and Initiating Audit - October 30, 2006 (Amherst Wind)	September 2/09
N-4	Appendix 3 - Final Rule, FERC Order No. 661, United States of America/Federal Energy Regulatory Commission - Interconnection for Wind Energy (Amherst Wind)	September 2/09
N-5	Appendix 4 - Federal Energy Regulatory Commission Version of Appendix G Power Factor Design Criteria Provision, as approved in FERC Order 661-A (Amherst Wind)	September 2/09
N-6	Appendix 5 - Amherst Wind Energy Partners - System Impact Study - Draft Report - 2005 (Amherst Wind)	September 2/09
N-7	Appendix 6 - United States of America/Federal Energy Regulatory Commission- FERC Order 661-A (Amherst Wind)	September 2/09
N-8	Appendix 7 - Federal Energy Regulatory Commission Pro Forma Version of GIA Section 11.4.1 (Amherst Wind)	September 2/09
N-9	Appendix 8 - United States of America/Federal Energy Regulatory Commission - FERC Order 2003-C - Standardization of Generator Interconnection Agreements and Procedures (Amherst Wind)	September 2/09
N-10	Confidential NSPI's Response to Amherst Wind Power LP's Submission	September 14/09
N-11	Amherst Wind Power LP's Response to NSPI's Submission	September 18/09

N-12	Confidential NSPI's Responses to Information Requests (IR-1 to IR-28) issued by Board	November 9/09
N-13	Amherst Wind Power LP's Responses to Information Requests (IR-1 to IR-16)	November 9/09
N-14	Exhibit 1(a) - Red Hills One Line Diagram (Amherst Wind)	November 9/09
N-15	Exhibit 1(b) - Dempsey One Line Diagram (Amherst Wind)	November 9/09
N-16	Exhibit 1(c) - Tatanka One Line Diagram (Amherst Wind)	November 9/09
N-17	Exhibit 2 - Niagara Mohawk Interconnection Facility Diagrams (Amherst Wind)	November 9/09
N-18	Final Submission - NSPI	November 16/09
N-19	Final Submission - Amherst Wind	November 16/09